CHAPTER 2. CIVIL PROCEDURE

MICHIGAN COURT RULES OF 1985

Subchapter 2.000 General Provisions

Rule 2.001 Applicability

The rules in this chapter govern procedure in all civil proceedings in all courts established by the constitution and laws of the State of Michigan, except where the limited jurisdiction of a court makes a rule inherently inapplicable or where a rule applicable to a specific court or a specific type of proceeding provides a different procedure.

Rule 2.002 Waiver or Suspension of Fees and Costs for Indigent Persons

(A) Applicability.

(1) Only a natural person is eligible for the waiver or suspension of fees and costs under this rule.

(2) Except as provided in subrule (F), for the purpose of this rule "fees and costs" applies only to filing fees required by law.

(B) Execution of Affidavits. An affidavit required by this rule may be signed either

(1) by the party in whose behalf the affidavit is made; or

(2) by a person having personal knowledge of the facts required to be shown, if the person in whose behalf the affidavit is made is unable to sign it because of minority or other disability. The affidavit must recite the minority or other disability.

(C) Persons Receiving Public Assistance. If a party shows by ex parte affidavit or otherwise that he or she is receiving any form of public assistance, the payment of fees and costs as to that party shall be suspended.

(D) Other Indigent Persons. If a party shows by ex parte affidavit or otherwise that he or she is unable because of indigency to pay fees and costs, the court shall order those fees and costs either waived or suspended until the conclusion of the litigation.

(E) Domestic Relations Cases; Payment of Fees and Costs by Spouse.

(1) In an action for divorce, separate maintenance, or annulment or affirmation of marriage, the court shall order suspension of payment of fees and costs required to be paid by a party and order that they be paid by the spouse, if that party

(a) is qualified for a waiver or suspension of fees and costs under subrule (C) or (D), and

(b) is entitled to an order requiring the spouse to pay attorney fees.

(2) If the spouse is entitled to have the fees and costs waived or suspended under subrule (C) or (D), the fees and costs are waived or suspended for the spouse.

(F) Payment of Service Fees and Costs of Publication for Indigent Persons. If payment of fees and costs has been waived or suspended for a party and service of process must be made by an official process server or by publication, the court shall order the service fees or costs of publication paid by the county or funding unit in which the action is pending, if the party submits an ex parte affidavit stating facts showing the necessity for that type of service of process.

(G) Reinstatement of Requirement for Payment of Fees and Costs. If the payment of fees or costs has been waived or suspended under this rule, the court may on its own initiative order the person for whom the fees or costs were waived or suspended to pay those fees or costs when the reason for the waiver or suspension no longer exists.

Rule 2.003 Disqualification of Judge

(A) Who May Raise. A party may raise the issue of a judge's disqualification by motion, or the judge may raise it.

(B) Grounds. A judge is disqualified when the judge cannot impartially hear a case, including but not limited to instances in which:

(1) The judge is personally biased or prejudiced for or against a party or attorney.

(2) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

(3) The judge has been consulted or employed as an attorney in the matter in controversy.

(4) The judge was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding two years.

(5) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding.

(6) The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(a) is a party to the proceeding, or an officer, director or trustee of a party;

(b) is acting as a lawyer in the proceeding;

(c) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;

(d) is to the judge's knowledge likely to be a material witness in the proceeding.

A judge is not disqualified merely because the judge's former law clerk is an attorney of record for a party in an action that is before the judge or is associated with a law firm representing a party in an action that is before the judge.

(C) Procedure.

(1) Time for Filing. To avoid delaying trial and inconveniencing the witnesses, a motion to disqualify must be filed within 14 days after the moving party discovers the ground for disqualification. If the discovery is made within 14 days of the trial date, the motion must be made forthwith. If a motion is not timely filed, untimeliness, including delay in waiving jury trial, is a factor in deciding whether the motion should be granted.

(2) All Grounds to be Included; Affidavit. In any motion under this rule, the moving party must include all grounds for disqualification that are known at the time the motion is filed. An affidavit must accompany the motion.

(3) Ruling. The challenged judge shall decide the motion. If the challenged judge denies the motion,

(a) in a court having two or more judges, on the request of a party, the challenged judge shall refer the motion to the chief judge, who shall decide the motion de novo;

(b) in a single-judge court, or if the challenged judge is the chief judge, on the request of a party, the challenged judge shall refer the motion to the state court administrator for assignment to another judge, who shall decide the motion de novo.

(4) Motion Granted. When a judge is disqualified, the action must be assigned to another judge of the same court, or, if one is not available, the state court administrator shall assign another judge.

(D) Remittal of Disqualification. If it appears that there may be grounds for disqualification, the judge may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If, following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceedings. The agreement shall be in writing or placed on the record.

Rule 2.004 Incarcerated Parties

(A) This subrule applies to

(1) domestic relations actions involving minor children, and

(2) other actions involving the custody, guardianship, neglect, or foster-care placement of minor children, or the termination of parental rights,

in which a party is incarcerated under the jurisdiction of the Department of Corrections.

(B) The party seeking an order regarding a minor child shall

(1) contact the department to confirm the incarceration and the incarcerated party's prison number and location;

(2) serve the incarcerated person with the petition or motion seeking an order regarding the minor child, and file proof with the court that the papers were served; and

(3) file with the court the petition or motion seeking an order regarding the minor child, stating that a party is incarcerated and providing the party's prison number and location; the caption of the petition or motion shall state that a telephonic hearing is required by this rule.

(C) When all the requirements of subrule (B) have been accomplished to the court's satisfaction, the court shall issue an order requesting the department, or the facility where the party is located if it is not a department facility, to allow that party to participate with the court or its designee by way of a noncollect and unmonitored telephone call in a hearing or conference, including a friend of the court adjudicative hearing or meeting. The order shall include the date and time for the hearing, and the prisoner's name and prison identification number, and shall be served by the court upon the parties and the warden or supervisor of the facility where the incarcerated party resides.

(D) All court documents or correspondence mailed to the incarcerated party concerning any matter covered by this rule shall include the name and the prison number of the incarcerated party on the envelope.

(E) The purpose of the telephone call described in this subrule is to determine

(1) whether the incarcerated party has received adequate notice of the proceedings and has had an opportunity to respond and to participate,

(2) whether counsel is necessary in matters allowing for the appointment of counsel to assure that the incarcerated party's access to the court is protected,

(3) whether the incarcerated party is capable of self-representation, if that is the party's choice,

(4) how the incarcerated party can communicate with the court or the friend of the court during the pendency of the action, and whether the party needs special assistance for such communication, including participation in additional telephone calls, and

(5) the scheduling and nature of future proceedings, to the extent practicable, and the manner in which the incarcerated party may participate.

(F) A court may not grant the relief requested by the moving party concerning the minor child if the incarcerated party has not been offered the opportunity to participate in the proceedings, as described in this rule. This provision shall not apply if the incarcerated party actually does participate in a telephone call, or if the court determines that immediate action is necessary on a temporary basis to protect the minor child.

(G) The court may impose sanctions if it finds that an attempt was made to keep information about the case from an incarcerated party in order to deny that party access to the courts.

Subchapter 2.100 Commencement of Action; Service of Process; Pleadings; Motions

Rule 2.101 Form and Commencement of Action

(A) Form of Action. There is one form of action known as a "civil action."

(B) Commencement of Action. A civil action is commenced by filing a complaint with a court.

Rule 2.102 Summons; Expiration of Summons; Dismissal of Action for Failure to Serve

(A) Issuance. On the filing of a complaint, the court clerk shall issue a summons to be served as provided in MCR 2.103 and 2.105. A separate summons may issue against a particular defendant or group of defendants. A duplicate summons may be issued from time to time and is as valid as the original summons.

(B) Form. A summons must be issued "In the name of the people of the State of Michigan," under the seal of the court that issued it. It must be directed to the defendant, and include

(1) the name and address of the court,

(2) the names of the parties,

(3) the file number,

(4) the name and address of the plaintiff's attorney or the address of a plaintiff appearing without an attorney,

(5) the defendant's address, if known,

(6) the name of the court clerk,

(7) the date on which the summons was issued,

(8) the last date on which the summons is valid,

(9) a statement that the summons is invalid unless served on or before the last date on which it is valid,

(10) the time within which the defendant is required to answer or take other action, and

(11) a notice that if the defendant fails to answer or take other action within the time allowed, judgment may be entered against the defendant for the relief demanded in the complaint.

(C) Amendment. At any time on terms that are just, a court may allow process or proof of service of process to be amended, unless it clearly appears that to do so would materially prejudice the substantive rights of the party against whom the process issued. An amendment relates back to the date of the original issuance or service of process unless the court determines that relation back would unfairly prejudice the party against whom the process issued.

(D) Expiration. A summons expires 91 days after the date the complaint is filed. However, within those 91 days, on a showing of due diligence by the plaintiff in attempting to serve the original summons, the judge to whom the action is assigned may order a second summons to issue for a definite period not exceeding 1 year from the date the complaint is filed. If such an extension is granted, the new summons expires at the end of the extended period. The judge may impose just conditions on the issuance of the second summons. Duplicate summonses issued under subrule (A) do not extend the life of the original summons. The running of the 91-day period is tolled while a motion challenging the sufficiency of the summons or of the service of the summons is pending.

(E) Dismissal as to Defendant Not Served.

(1) On the expiration of the summons as provided in subrule (D), the action is deemed dismissed without prejudice as to a defendant who has not been served with process as provided in these rules, unless the defendant has submitted to the court's jurisdiction. As to a defendant added as a party after the filing of the first complaint in the action, the time provided in this rule runs from the filing of the first pleading that names that defendant as a party.

(2) After the time stated in subrule (E)(1), the clerk shall examine the court records and enter an order dismissing the action as to a defendant who has not been served with process or submitted to the court's jurisdiction. The clerk's failure to enter a dismissal order does not continue an action deemed dismissed.

(3) The clerk shall give notice of the entry of a dismissal order under MCR 2.107 and record the date of the notice in the case file. The failure to give notice does not affect the dismissal.

(F) Setting Aside Dismissal. A court may set aside the dismissal of the action as to a defendant under subrule (E) only on stipulation of the parties or when all of the following conditions are met:

(1) within the time provided in subrule (D), service of process was in fact made on the dismissed defendant, or the defendant submitted to the court's jurisdiction;

(2) proof of service of process was filed or the failure to file is excused for good cause shown;

(3) the motion to set aside the dismissal was filed within 28 days after notice of the order of dismissal was given, or, if notice of dismissal was not given, the motion was promptly filed after the plaintiff learned of the dismissal.

(G) Exception; Summary Proceedings to Recover Possession of Realty. Subrules (D), (E), and (F) do not apply to summary proceedings governed by MCL 600.5701-600.5759 and by subchapter 4.200 of these rules.

Rule 2.103 Process; Who May Serve

(A) Service Generally. Process in civil actions may be served by any legally competent adult who is not a party or an officer of a corporate party.

(B) Service Requiring Seizure of Property. A writ of restitution or process requiring the seizure or attachment of property may only be served by

(1) a sheriff or deputy sheriff, or a bailiff or court officer appointed by the court for that purpose,

(2) an officer of the Department of State Police in an action in which the state is a party, or

(3) a police officer of an incorporated city or village in an action in which the city or village is a party.

A writ of garnishment may be served by any person authorized by subrule (A).

(C) Service in a Governmental Institution. If personal service of process is to be made on a person in a governmental institution, hospital, or home, service must be made by the person in charge of the institution or by someone designated by that person.

(D) Process Requiring Arrest. Process in civil proceedings requiring the arrest of a person may be served only by a sheriff, deputy sheriff, or police officer, or by a court officer appointed by the court for that purpose.

Rule 2.104 Process; Proof of Service

(A) Requirements. Proof of service may be made by

(1) written acknowledgment of the receipt of a summons and a copy of the complaint, dated and signed by the person to whom the service is directed or by a person authorized under these rules to receive the service of process;

(2) a certificate stating the facts of service, including the manner, time, date, and place of service, if service is made within the State of Michigan by

(a) a sheriff,

(b) a deputy sheriff or bailiff, if that officer holds office in the county in which the court issuing the process is held,

(c) an appointed court officer,

(d) an attorney for a party; or

(3) an affidavit stating the facts of service, including the manner, time, date, and place of service, and indicating the process server's official capacity, if any.

The place of service must be described by giving the address where the service was made or, if the service was not made at a particular address, by another description of the location.

(B) Failure to File. Failure to file proof of service does not affect the validity of the service.

(C) Publication, Posting, and Mailing. If the manner of service used requires sending a copy of the summons and complaint by mail, the party requesting issuance of the summons is responsible for arranging the mailing and filing proof of service. Proof of publication, posting, and mailing under MCR 2.106 is governed by MCR 2.106(G).

Rule 2.105 Process; Manner of Service

(A) Individuals. Process may be served on a resident or nonresident individual by

(1) delivering a summons and a copy of the complaint to the defendant personally; or

(2) sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the defendant acknowledges receipt of the mail. A copy of the return receipt signed by the defendant must be attached to proof showing service under subrule (A)(2).

(B) Individuals; Substituted Service. Service of process may be made

(1) on a nonresident individual, by

(a) serving a summons and a copy of the complaint in Michigan on an agent, employee, representative, sales representative, or servant of the defendant, and

(b) sending a summons and a copy of the complaint by registered mail addressed to the defendant at his or her last known address;

(2) on a minor, by serving a summons and a copy of the complaint on a person having care and control of the minor and with whom he or she resides;

(3) on a defendant for whom a guardian or conservator has been appointed and is acting, by serving a summons and a copy of the complaint on the guardian or conservator;

(4) on an individual doing business under an assumed name, by

(a) serving a summons and copy of the complaint on the person in charge of an office or business establishment of the individual, and

(b) sending a summons and a copy of the complaint by registered mail addressed to the individual at his or her usual residence or last known address.

(C) Partnerships; Limited Partnerships. Service of process on a partnership or limited partnership may be made by

(1) serving a summons and a copy of the complaint on any general partner; or

(2) serving a summons and a copy of the complaint on the person in charge of a partnership office or business establishment and sending a summons and a copy of the complaint by registered mail, addressed to a general partner at his or her usual residence or last known address.

(D) Private Corporations, Domestic and Foreign. Service of process on a domestic or foreign corporation may be made by

(1) serving a summons and a copy of the complaint on an officer or the resident agent;

(2) serving a summons and a copy of the complaint on a director, trustee, or person in charge of an office or business establishment of the corporation and

sending a summons and a copy of the complaint by registered mail, addressed to the principal office of the corporation;

(3) serving a summons and a copy of the complaint on the last presiding officer, president, cashier, secretary, or treasurer of a corporation that has ceased to do business by failing to keep up its organization by the appointment of officers or otherwise, or whose term of existence has expired;

(4) sending a summons and a copy of the complaint by registered mail to the corporation or an appropriate corporation officer and to the Michigan Corporation and Securities Bureau if

(a) the corporation has failed to appoint and maintain a resident agent or to file a certificate of that appointment as required by law;

(b) the corporation has failed to keep up its organization by the appointment of officers or otherwise; or

(c) the corporation's term of existence has expired.

(E) Partnership Associations; Unincorporated Voluntary Associations. Service of process on a partnership association or an unincorporated voluntary association may be made by

(1) serving a summons and a copy of the complaint on an officer, director, trustee, agent, or person in charge of an office or business establishment of the association, and

(2) sending a summons and a copy of the complaint by registered mail, addressed to an office of the association. If an office cannot be located, a summons and a copy of the complaint may be sent by registered mail to a member of the association other than the person on whom the summons and complaint was served.

(F) Service on Insurer. If service on an insurer is made by serving the Commissioner of Insurance, as permitted by statute, 2 summonses and a copy of the complaint must be delivered or mailed by registered mail to the office of the Commissioner of Insurance.

(G) Public Corporations. Service of process on a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, or public body may be made by serving a summons and a copy of the complaint on:

(1) the chairperson of the board of commissioners or the county clerk of a county;

(2) the mayor, the city clerk, or the city attorney of a city;

(3) the president, the clerk, or a trustee of a village;

(4) the supervisor or the township clerk of a township;

(5) the president, the secretary, or the treasurer of a school district;

(6) the president or the secretary of the Michigan State Board of Education;

(7) the president, the secretary, or other member of the governing body of a corporate body or an unincorporated board having control of a state institution;

(8) the president, the chairperson, the secretary, the manager, or the clerk of any other public body organized or existing under the constitution or laws of Michigan, when no other method of service is specially provided by statute.

The service of process may be made on an officer having substantially the same duties as those named or described above, irrespective of title. In any case, service may be made by serving a summons and a copy of the complaint on a person in charge of the office of an officer on whom service may be made and sending a summons and a copy of the complaint by registered mail addressed to the officer at his or her office.

(H) Agent Authorized by Appointment or by Law.

(1) Service of process on a defendant may be made by serving a summons and a copy of the complaint on an agent authorized by written appointment or by law to receive service of process.

(2) Whenever, pursuant to statute or court rule, service of process is to be made on a nongovernmental defendant by service on a public officer, service on the public officer may be made by registered mail addressed to his or her office.

(I) Discretion of the Court.

(1) On a showing that service of process cannot reasonably be made as provided by this rule, the court may by order permit service of process to be made in any other manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard.

(2) A request for an order under the rule must be made in a verified motion dated not more than 14 days before it is filed. The motion must set forth sufficient facts to show that process cannot be served under this rule and must state the defendant's address or last known address, or that no address of the defendant is known. If the name or present address of the defendant is unknown, the moving party must set forth facts showing diligent inquiry to ascertain it. A hearing on the motion is not required unless the court so directs.

(3) Service of process may not be made under this subrule before entry of the court's order permitting it.

(J) Jurisdiction; Range of Service; Effect of Improper Service.

(1) Provisions for service of process contained in these rules are intended to satisfy the due process requirement that a defendant be informed of an action by the best means available under the circumstances. These rules are not intended to limit or expand the jurisdiction given the Michigan courts over a defendant. The jurisdiction of a court over a defendant is governed by the United States Constitution and the constitution and laws of the State of Michigan. See MCL 600.701 *et seq.*

(2) There is no territorial limitation on the range of process issued by a Michigan court.

(3) An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service.

(K) Registered and Certified Mail.

(1) If a rule uses the term "registered mail," that term includes the term "certified mail," and the term "registered mail, return receipt requested" includes the term "certified mail, return receipt requested." However, if certified mail is used, the receipt of mailing must be postmarked by the post office.

(2) If a rule uses the term "certified mail," a postmarked receipt of mailing is not required. Registered mail may be used when a rule requires certified mail.

Rule 2.106 Notice by Posting or Publication

(A) Availability. This rule governs service of process by publication or posting pursuant to an order under MCR 2.105(I).

(B) Procedure. A request for an order permitting service under this rule shall be made by motion in the manner provided in MCR 2.105(I). In ruling on the motion, the court shall determine whether mailing is required under subrules (D)(2) or (E)(2).

(C) Notice of Action; Contents.

(1) The order directing that notice be given to a defendant under this rule must include

(a) the name of the court,

(b) the names of the parties,

(c) a statement describing the nature of the proceedings,

(d) directions as to where and when to answer or take other action permitted by law or court rule, and

(e) a statement as to the effect of failure to answer or take other action.

(2) If the names of some or all defendants are unknown, the order must describe the relationship of the unknown defendants to the matter to be litigated in the best way possible, as, for example, unknown claimants, unknown owners, or unknown heirs, devisees, or assignees of a named person.

(D) Publication of Order; Mailing. If the court orders notice by publication, the defendant shall be notified of the action by

(1) publishing a copy of the order once each week for 3 consecutive weeks, or for such further time as the court may require, in a newspaper in the county where the defendant resides, if known, and if not, in the county where the action is pending; and

(2) sending a copy of the order to the defendant at his or her last known address by registered mail, return receipt requested, before the date of the last publication. If the plaintiff does not know the present or last known address of the defendant, and cannot ascertain it after diligent inquiry, mailing a copy of

the order is not required. The moving party is responsible for arranging for the mailing and proof of mailing.

(E) Posting; Mailing. If the court orders notice by posting, the defendant shall be notified of the action by

(1) posting a copy of the order in the courthouse and 2 or more other public places as the court may direct for 3 continuous weeks or for such further time as the court may require; and

(2) sending a copy of the order to the defendant at his or her last known address by registered mail, return receipt requested, before the last week of posting. If the plaintiff does not know the present or last known address of the defendant, and cannot ascertain it after diligent inquiry, mailing a copy of the order is not required. The moving party is responsible for arranging for the mailing and proof of mailing.

The order must designate who is to post the notice and file proof of posting. Only a person listed in MCR 2.103(B)(1), (2), or (3) may be designated.

(F) Newspaper Defined.

(1) The term "newspaper" as used in this rule is limited to a newspaper published in the English language for the dissemination of general news and information or for the dissemination of legal news. The newspaper must have a bona fide list of paying subscribers or have been published at least once a week in the same community without interruption for at least 2 years, and have been established, published, and circulated at least once a week without interruption for at least 1 year in the county where publication is to occur.

(2) If no newspaper qualifies in the county where publication is to be made under subrule (D)(1) the term "newspaper" includes a newspaper that by this rule is qualified to publish notice of actions commenced in an adjoining county.

(G) Proof of Service. Service of process made pursuant to this rule may be proven as follows:

(1) Publication must be proven by an affidavit of the publisher or the publisher's agent

(a) stating facts establishing the qualification of the newspaper in which the order was published,

(b) setting out a copy of the published order, and

(c) stating the dates on which it was published.

(2) Posting must be proven by an affidavit of the person designated in the order under subrule (E) attesting that a copy of the order was posted for the required time in the courthouse in a conspicuous place open to the public and in the other places as ordered by the court.

(3) Mailing must be proven by affidavit. The affiant must attach a copy of the order as mailed, and a return receipt.

Rule 2.107 Service and Filing of Pleadings and Other Papers

(A) Service; When Required.

(1) Unless otherwise stated in this rule, every party who has filed a pleading, an appearance, or a motion must be served with a copy of every paper later filed in the action. A nonparty who has filed a motion or appeared in response to a motion need only be served with papers that relate to that motion.

(2) Except as provided in MCR 2.603, after a default is entered against a party, further service of papers need not be made on that party unless he or she has filed an appearance or a written demand for service of papers. However, a pleading that states a new claim for relief against a party in default must be served in the manner provided by MCR 2.105.

(3) If an attorney appears on behalf of a person who has not received a copy of the complaint, a copy of the complaint must be delivered to the attorney on request.

(4) All papers filed on behalf of a defendant must be served on all other defendants not in default.

(B) Service on Attorney or Party.

(1) Service required or permitted to be made on a party for whom an attorney has appeared in the action must be made on the attorney except as follows:

(a) The original service of the summons and complaint must be made on the party as provided by MCR 2.105;

(b) When a contempt proceeding for disobeying a court order is initiated, the notice or order must be personally delivered to the party, unless the court orders otherwise;

(c) After a final judgment has been entered and the time for an appeal of right has passed, papers must be served on the party unless the rule governing the particular postjudgment procedure specifically allows service on the attorney;

(d) The court may order service on the party.

(2) If two or more attorneys represent the same party, service of papers on one of the attorneys is sufficient. An attorney who represents more than one party is entitled to service of only one copy of a paper.

(3) If a party prosecutes or defends the action on his or her own behalf, service of papers must be made on the party in the manner provided by subrule (C).

(C) Manner of Service. Service of a copy of a paper on an attorney must be made by delivery or by mailing to the attorney at his or her last known business address or, if the attorney does not have a business address, then to his or her last known residence address. Service on a party must be made by delivery or by mailing to the party at the address stated in the party's pleadings.

(1) Delivery to Attorney. Delivery of a copy to an attorney within this rule means

(a) handing it to the attorney personally, or, if agreed to by the parties, e-mailing it to the attorney as allowed under MCR 2.107(C)(4);

(b) leaving it at the attorney's office with the person in charge or, if no one is in charge or present, by leaving it in a conspicuous place; or

(c) if the office is closed or the attorney has no office, by leaving it at the attorney's usual residence with some person of suitable age and discretion residing there.

(2) Delivery to Party. Delivery of a copy to a party within this rule means

(a) handing it to the party personally, or, if agreed to by the parties, e-mailing it to the party as allowed under MCR 2.107(C)(4); or

(b) leaving it at the party's usual residence with some person of suitable age and discretion residing there.

(3) Mailing. Mailing a copy under this rule means enclosing it in a sealed envelope with first class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail. Service by mail is complete at the time of mailing.

(4) E-mail. Some or all of the parties may agree to e-mail service among themselves by filing a stipulation in that case. Some or all of the parties may agree to e-mail service by a court by filing an agreement with the court to do so. E-mail service shall be subject to the following conditions:

(a) The stipulation or agreement for service by e-mail shall set forth the e-mail addresses of the parties or attorneys that agree to e-mail service, which shall include the same e-mail address currently on file with the State Bar of Michigan. If an attorney is not a member of the State Bar of Michigan, the e-mail address shall be the e-mail address currently on file with the appropriate registering agency in the state of the attorney's admission. Parties and attorneys who have stipulated or agreed to service by e-mail under this subsection shall immediately notify all other parties and the court if the party's or attorney's e-mail address changes.

(b) The parties shall set forth in the stipulation or agreement all limitations and conditions concerning e-mail service, including but not limited to:

(i) the maximum size of the document that may be attached to an e-mail;

(ii) designation of exhibits as separate documents;

(iii) the obligation (if any) to furnish paper copies of e-mailed documents; and

(iv) the names and e-mail addresses of other individuals in the office of an attorney of record designated to receive e-mail service on behalf of a party.

(c) Documents served by e-mail must be in PDF format or other format that prevents the alteration of the document contents.

(d) A paper served by e-mail that an attorney is required to sign may include the attorney's actual signature or a signature block with the name of the signatory accompanied by "s/" or "/s/." That designation shall constitute a signature for all purposes, including those contemplated by MCR 2.114(C) and (D).

(e) Each e-mail that transmits a document shall include a subject line that identifies the case by court, party name, case number, and the title or legal description of the document(s) being sent.

(f) An e-mail transmission sent after 4:30 p.m. Eastern Time shall be deemed to be served on the next day that is not a Saturday, Sunday, or legal holiday. Service by e-mail under this subrule is treated as service by delivery under MCR 2.107(C)(1).

(g) A party may withdraw from a stipulation or agreement for service by e-mail if that party notifies the other party or parties and the court in writing at least 28 days in advance of the withdrawal.

(h) Service by e-mail is complete upon transmission, unless the party making service learns that the attempted service did not reach the e-mail address of the intended recipient. If an e-mail is returned as undeliverable, the party, attorney, or court must serve the paper or other document by regular mail under MCR 2.107(C)(3), and include a copy of the return notice indicating that the e-mail was undeliverable. A party, attorney, or court must also retain a notice that the e-mail was undeliverable.

(i) The e-mail sender shall maintain an archived record of sent items that shall not be purged until the conclusion of the case, including the disposition of all appeals.

(D) Proof of Service. Except as otherwise provided by MCR 2.104, 2.105, or 2.106, proof of service of papers required or permitted to be served may be by written acknowledgment of service, affidavit of the person making the service, a statement regarding the service verified under MCR 2.114(B), or other proof satisfactory to

the court. The proof of service may be included at the end of the paper as filed. Proof of service must be filed promptly and at least at or before a hearing to which the paper relates.

(E) Service Prescribed by Court. When service of papers after the original complaint cannot reasonably be made because there is no attorney of record, because the party cannot be found, or for any other reason, the court, for good cause on ex parte application, may direct in what manner and on whom service may be made.

(F) Numerous Parties. In an action in which there is an unusually large number of parties on the same side, the court on motion or on its own initiative may order that

(1) they need not serve their papers on each other;

(2) responses to their pleadings need only be served on the party to whose pleading the response is made;

(3) a cross-claim, counterclaim, or allegation in an answer demanding a reply is deemed denied by the parties not served; and

(4) the filing of a pleading and service on an adverse party constitutes notice of it to all parties.

A copy of the order must be served on all parties in the manner the court directs.

(G) Filing With Court Defined. The filing of pleadings and other papers with the court as required by these rules must be with the clerk of the court, except that the judge to whom the case is assigned may accept papers for filing when circumstances warrant. A judge who does so shall note the filing date on the papers and transmit them forthwith to the clerk. It is the responsibility of the party who presented the papers to confirm that they have been filed with the clerk. If the clerk dockets papers on a date other than the filing date, the clerk shall note the filing date on the register of actions.

Rule 2.108 Time

(A) Time for Service and Filing of Pleadings.

(1) A defendant must serve and file an answer or take other action permitted by law or these rules within 21 days after being served with the summons and a copy of the complaint in Michigan in the manner provided in MCR 2.105(A)(1).

(2) If service of the summons and a copy of the complaint is made outside Michigan, or if the manner of service used requires the summons and a copy of the complaint to be sent by registered mail addressed to the defendant, the defendant must serve and file an answer or take other action permitted by law or these rules within 28 days after service.

(3) When service is made in accordance with MCR 2.106, the court shall allow a reasonable time for the defendant to answer or take other action permitted by law or these rules, but may not prescribe a time less than 28 days after publication or posting is completed.

(4) A party served with a pleading stating a cross-claim or counterclaim against that party must serve and file an answer or take other action permitted by law or these rules within 21 days after service.

(5) A party served with a pleading to which a reply is required or permitted may serve and file a reply within 21 days after service of the pleading to which it is directed.

(6) In an action alleging medical malpractice filed on or after October 1, 1986, unless the defendant has responded as provided in subrule (A)(1) or (2), the defendant must serve and file an answer within 21 days after being served with the notice of filing the security for costs or the affidavit in lieu of such security required by MCL 600.2912d.

(B) Time for Filing Motion in Response to Pleading. A motion raising a defense or an objection to a pleading must be served and filed within the time for filing the responsive pleading or, if no responsive pleading is required, within 21 days after service of the pleading to which the motion is directed.

(C) Effect of Particular Motions and Amendments. When a motion or an amended pleading is filed, the time for pleading set in subrule (A) is altered as follows, unless a different time is set by the court:

(1) If a motion under MCR 2.116 made before filing a responsive pleading is denied, the moving party must serve and file a responsive pleading within 21 days after notice of the denial. However, if the moving party, within 21 days, files an application for leave to appeal from the order, the time is extended until 21 days after the denial of the application unless the appellate court orders otherwise.

(2) An order granting a motion under MCR 2.116 must set the time for service and filing of the amended pleading, if one is allowed.

(3) The response to a supplemental pleading or to a pleading amended either as of right or by leave of court must be served and filed within the time remaining for response to the original pleading or within 21 days after service of the supplemental or amended pleading, whichever period is longer.

(4) If the court has granted a motion for more definite statement, the responsive pleading must be served and filed within 21 days after the more definite statement is served.

(D) Time for Service of Order to Show Cause. An order to show cause must set the time for service of the order and for the hearing, and may set the time for answer to the complaint or response to the motion on which the order is based.

(E) Extension of Time. A court may, with notice to the other parties who have appeared, extend the time for serving and filing a pleading or motion or the doing of another act, if the request is made before the expiration of the period originally prescribed. After the expiration of the original period, the court may, on motion, permit a party to act if the failure to act was the result of excusable neglect. However, if a rule governing a particular act limits the authority to extend the time,

those limitations must be observed. MCR 2.603(D) applies if a default has been entered.

(F) Unaffected by Expiration of Term. The time provided for the doing of an act or the holding of a proceeding is not affected or limited by the continuation or expiration of a term of court. The continuation or expiration of a term of court does not affect the power of a court to do an act or conduct a proceeding in a civil action pending before it.

Rule 2.109 Security for Costs

(A) Motion. On motion of a party against whom a claim has been asserted in a civil action, if it appears reasonable and proper, the court may order the opposing party to file with the court clerk a bond with surety as required by the court in an amount sufficient to cover all costs and other recoverable expenses that may be awarded by the trial court, or, if the claiming party appeals, by the trial and appellate courts. The court shall determine the amount in its discretion. MCR 3.604(E) and (F) govern objections to the surety.

(B) Exceptions. Subrule (A) does not apply in the following circumstances:

(1) The court may allow a party to proceed without furnishing security for costs if the party's pleading states a legitimate claim and the party shows by affidavit that he or she is financially unable to furnish a security bond.

(2) Security shall not be required of

(a) the United States or an agency or instrumentality of the United States;

(b) the State of Michigan or a governmental unit of the state, including but not limited to a public, municipal, quasi-municipal or governmental corporation, unincorporated board, public body, or political subdivision; or

(c) an officer of a governmental unit or agency exempt from security who brings an action in his or her official capacity.

(C) Modification of Order. The court may order new or additional security at any time on just terms,

(1) if the party or the surety moves out of Michigan, or

(2) if the original amount of the bond proves insufficient.

A person who becomes a new or additional surety is liable for all costs from the commencement of the action, as if he or she had been the original surety.

Rule 2.110 Pleadings

(A) Definition of "Pleading." The term "pleading" includes only:

(1) a complaint,

(2) a cross-claim,

(3) a counterclaim,

(4) a third-party complaint,

(5) an answer to a complaint, cross-claim, counterclaim, or third-party complaint, and

(6) a reply to an answer.

No other form of pleading is allowed.

(B) When Responsive Pleading Required. A party must file and serve a responsive pleading to

(1) a complaint,

(2) a counterclaim,

(3) a cross-claim,

(4) a third-party complaint, or

(5) an answer demanding a reply.

(C) Designation of Cross-Claim or Counterclaim. A cross-claim or a counterclaim may be combined with an answer. The counterclaim or cross-claim must be clearly designated as such.

(1) A responsive pleading is not required to a cross-claim or counterclaim that is not clearly designated as such in the answer.

(2) If a party has raised a cross-claim or counterclaim in the answer, but has not designated it as such, the court may treat the pleading as if it had been properly designated and require the party to amend the pleading, direct the opposing party to file a responsive pleading, or enter another appropriate order.

(3) The court may treat a cross-claim or counterclaim designated as a defense, or a defense designated as a cross-claim or counterclaim, as if the designation had been proper and issue an appropriate order.

Rule 2.111 General Rules of Pleading

(A) Pleading to be Concise and Direct; Inconsistent Claims.

(1) Each allegation of a pleading must be clear, concise, and direct.

(2) Inconsistent claims or defenses are not objectionable. A party may

(a) allege two or more statements of fact in the alternative when in doubt about which of the statements is true;

(b) state as many separate claims or defenses as the party has, regardless of consistency and whether they are based on legal or equitable grounds or on both.

All statements made in a pleading are subject to the requirements of MCR 2.114.

(B) Statement of Claim. A complaint, counterclaim, cross-claim, or third-party complaint must contain the following:

(1) A statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to

inform the adverse party of the nature of the claims the adverse party is called on to defend; and

(2) A demand for judgment for the relief that the pleader seeks. If the pleader seeks an award of money, a specific amount must be stated if the claim is for a sum certain or a sum that can by computation be made certain, or if the amount sought is $25,000 or less. Otherwise, a specific amount may not be stated, and the pleading must include allegations that show that the claim is within the jurisdiction of the court. Declaratory relief may be claimed in cases of actual controversy. See MCR 2.605. Relief in the alternative or relief of several different types may be demanded.

(C) Form of Responsive Pleading. As to each allegation on which the adverse party relies, a responsive pleading must

(1) state an explicit admission or denial;

(2) plead no contest; or

(3) state that the pleader lacks knowledge or information sufficient to form a belief as to the truth of an allegation, which has the effect of a denial.

(D) Form of Denials. Each denial must state the substance of the matters on which the pleader will rely to support the denial.

(E) Effect of Failure to Deny.

(1) Allegations in a pleading that requires a responsive pleading, other than allegations of the amount of damage or the nature of the relief demanded, are admitted if not denied in the responsive pleading.

(2) Allegations in a pleading that does not require a responsive pleading are taken as denied.

(3) A pleading of no contest, provided for in subrule (C)(2), permits the action to proceed without proof of the claim or part of the claim to which the pleading is directed. Pleading no contest has the effect of an admission only for purposes of the pending action.

(F) Defenses; Requirement That Defense Be Pleaded.

(1) Pleading Multiple Defenses. A pleader may assert as many defenses, legal or equitable or both, as the pleader has against an opposing party. A defense is not waived by being joined with other defenses.

(2) Defenses Must Be Pleaded; Exceptions. A party against whom a cause of action has been asserted by complaint, cross-claim, counterclaim, or third-party claim must assert in a responsive pleading the defenses the party has against the claim. A defense not asserted in the responsive pleading or by motion as provided by these rules is waived, except for the defenses of lack of jurisdiction over the subject matter of the action, and failure to state a claim on which relief can be granted. However,

(a) a party who has asserted a defense by motion filed pursuant to MCR 2.116 before filing a responsive pleading need not again assert that defense in a responsive pleading later filed;

(b) if a pleading states a claim for relief to which a responsive pleading is not required, a defense to that claim may be asserted at the trial unless a pretrial conference summary pursuant to MCR 2.401(C) has limited the issues to be tried.

(3) Affirmative Defenses. Affirmative defenses must be stated in a party's responsive pleading, either as originally filed or as amended in accordance with MCR 2.118. Under a separate and distinct heading, a party must state the facts constituting

(a) an affirmative defense, such as contributory negligence; the existence of an agreement to arbitrate; assumption of risk; payment; release; satisfaction; discharge; license; fraud; duress; estoppel; statute of frauds; statute of limitations; immunity granted by law; want or failure of consideration; or that an instrument or transaction is void, voidable, or cannot be recovered on by reason of statute or nondelivery;

(b) a defense that by reason of other affirmative matter seeks to avoid the legal effect of or defeat the claim of the opposing party, in whole or in part;

(c) a ground of defense that, if not raised in the pleading, would be likely to take the adverse party by surprise.

Rule 2.112 Pleading Special Matters

(A) Capacity; Legal Existence.

(1) Except to the extent required to show jurisdiction of a court, it is not necessary to allege

(a) the capacity of a party to sue,

(b) the authority of a party to sue or be sued in a representative capacity, or

(c) the legal existence of an organized association of persons that is made a party.

(2) A party wishing to raise an issue about

(a) the legal existence of a party,

(b) the capacity of a party to sue or be sued, or

(c) the authority of a party to sue or be sued in a representative capacity,

must do so by specific allegation, including supporting facts peculiarly within the pleader's knowledge.

(B) Fraud, Mistake, or Condition of Mind.

(1) In allegations of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity.

(2) Malice, intent, knowledge, and other conditions of mind may be alleged generally.

(C) Conditions Precedent.

(1) In pleading performance or occurrence of conditions precedent, it is sufficient to allege generally that all conditions precedent have been performed or have occurred.

(2) A denial of performance or occurrence must be made specifically and with particularity.

(D) Action on Policy of Insurance.

(1) In an action on a policy of insurance, it is sufficient to allege

(a) the execution, date, and amount of the policy,

(b) the premium paid or to be paid,

(c) the property or risk insured,

(d) the interest of the insured, and

(e) the loss.

(2) A defense of

(a) breach of condition, agreement, representation, or warranty of a policy of insurance or of an application for a policy; or

(b) failure to furnish proof of loss as required by the policy must be stated specifically and with particularity.

(E) Action on Written Instrument.

(1) In an action on a written instrument, the execution of the instrument and the handwriting of the defendant are admitted unless the defendant specifically denies the execution or the handwriting and supports the denial with an affidavit filed with the answer. The court may, for good cause, extend the time for filing the affidavits.

(2) This subrule also applies to an action against an indorser and to a party against whom a counterclaim or a cross-claim on a written instrument is filed.

(F) Official Document or Act. In pleading an official document or official act, it is sufficient to allege that the document was issued or the act done in compliance with law.

(G) Judgment. A judgment or decision of a domestic or foreign court, a tribal court of a federally recognized Indian tribe, a judicial or quasi-judicial tribunal, or a board or officer, must be alleged with sufficient particularity to identify it; it is not necessary to state facts showing jurisdiction to render it.

(H) Statutes, Ordinances, or Charters. In pleading a statute, ordinance, or municipal charter, it is sufficient to identify it, without stating its substance, except as provided in subrule (M).

(I) Special Damages. When items of special damage are claimed, they must be specifically stated.

(J) Law of Other Jurisdictions; Notice in Pleadings. A party who intends to rely on or raise an issue concerning the law of

(1) a state other than Michigan,

(2) a United States territory,

(3) a foreign nation or unit thereof, or

(4) a federally recognized Indian tribe

must give notice of that intention either in his or her pleadings or in a written notice served by the close of discovery.

(K) Fault of Nonparties; Notice.

(1) Applicability. This rule applies to actions for personal injury, property damage, and wrongful death to which MCL 600.2957 and MCL 600.6304, as amended by 1995 PA 249, apply.

(2) Notice Requirement. Notwithstanding MCL 600.6304, the trier of fact shall not assess the fault of a nonparty unless notice has been given as provided in this subrule.

(3) Notice.

(a) A party against whom a claim is asserted may give notice of a claim that a nonparty is wholly or partially at fault. A notice filed by one party identifying a particular nonparty serves as notice by all parties as to that nonparty.

(b) The notice shall designate the nonparty and set forth the nonparty's name and last known address, or the best identification of the nonparty that is possible, together with a brief statement of the basis for believing the nonparty is at fault.

(c) The notice must be filed within 91 days after the party files its first responsive pleading. On motion, the court shall allow a later filing of the notice on a showing that the facts on which the notice is based were not and could not with reasonable diligence have been known to the moving party earlier, provided that the late filing of the notice does not result in unfair prejudice to the opposing party.

(4) Amendment Adding Party. A party served with a notice under this subrule may file an amended pleading stating a claim or claims against the nonparty within 91 days of service of the first notice identifying that nonparty. The court may permit later amendment as provided in MCR 2.118.

(L) Medical Malpractice Actions. In an action alleging medical malpractice filed on or after October 1, 1993, each party must file an affidavit as provided in MCL 600.2912d, 600.2912e. Notice of filing the affidavit must be promptly served on the opposing party. If the opposing party has appeared in the action, the notice may be served in the manner provided by MCR 2.107. If the opposing party has not appeared, the notice must be served in the manner provided by MCR 2.105. Proof of service of the notice must be promptly filed with the court.

(M) Headlee Amendment Actions. In an action alleging a violation of Const 1963, art 9, §§ 25-34, the factual basis for the alleged violation or a defense must be stated with particularity. In an action involving Const 1963, art 9, § 29, the

plaintiff must state with particularity the type and extent of the harm and whether there has been a violation of either the first or second sentence of that section. In an action involving the second sentence of Const 1963, art 9, §29, the plaintiff must state with particularity the activity or service involved. All statutes involved in the case must be identified, and copies of all ordinances and municipal charter provisions involved, and any available documentary evidence supportive of a claim or defense, must be attached to the pleading. The parties may supplement their pleadings with additional documentary evidence as it becomes available to them.

Rule 2.113 Form of Pleadings and Other Papers

(A) Applicability. The rules on the form, captioning, signing, and verifying of pleadings apply to all motions, affidavits, and other papers provided for by these rules. However, an affidavit must be verified by oath or affirmation.

(B) Preparation. Every pleading must be legibly printed in the English language in type no smaller than 12 point.

(C) Captions.

(1) The first part of every pleading must contain a caption stating

(a) the name of the court;

(b) the names of the parties or the title of the action, subject to subrule (D);

(c) the case number, including a prefix of the year filed and a two-letter suffix for the case-type code from a list provided by the State Court Administrator pursuant to MCR 8.117 according to the principal subject matter of the proceeding;

(d) the identification of the pleading (see MCR 2.110[A]);

(e) the name, business address, telephone number, and state bar number of the pleading attorney;

(f) the name, address, and telephone number of a pleading party appearing without an attorney; and

(g) the name and state bar number of each other attorney who has appeared in the action.

(2) The caption of a complaint must also contain either (a) or (b) as a statement of the attorney for the plaintiff, or of a plaintiff appearing without an attorney:

(a) There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

(b) A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in [this court]/[_____ Court], where it was given docket number _____ and was assigned to Judge _____. The action [remains]/[is no longer] pending.

(3) If an action has been assigned to a particular judge in a multi-judge court, the name of that judge must be included in the caption of a pleading later filed with the court.

(D) Names of Parties.

(1) In a complaint, the title of the action must include the names of all the parties, with the plaintiff's name placed first.

(2) In other pleadings, it is sufficient to state the name of the first party on each side with an appropriate indication of other parties, such as "et al."

(E) Paragraphs; Separate Statements.

(1) All allegations must be made in numbered paragraphs, and the paragraphs of a responsive pleading must be numbered to correspond to the numbers of the paragraphs being answered.

(2) The content of each paragraph must be limited as far as practicable to a single set of circumstances.

(3) Each statement of a claim for relief founded on a single transaction or occurrence or on separate transactions or occurrences, and each defense other than a denial, must be stated in a separately numbered count or defense.

(F) Exhibits; Written Instruments.

(1) If a claim or defense is based on a written instrument, a copy of the instrument or its pertinent parts must be attached to the pleading as an exhibit unless the instrument is

(a) a matter of public record in the county in which the action is commenced and its location in the record is stated in the pleading;

(b) in the possession of the adverse party and the pleading so states;

(c) inaccessible to the pleader and the pleading so states, giving the reason; or

(d) of a nature that attaching the instrument would be unnecessary or impractical and the pleading so states, giving the reason.

(2) An exhibit attached or referred to under subrule (F)(1)(a) or (b) is a part of the pleading for all purposes.

(G) Adoption by Reference. Statements in a pleading may be adopted by reference only in another part of the same pleading.

Rule 2.114 Signatures of Attorneys and Parties; Verification; Effect; Sanctions

(A) Applicability. This rule applies to all pleadings, motions, affidavits, and other papers provided for by these rules. See MCR 2.113(A). In this rule, the term "document" refers to all such papers.

(B) Verification.

(1) Except when otherwise specifically provided by rule or statute, a document need not be verified or accompanied by an affidavit.

(2) If a document is required or permitted to be verified, it may be verified by

(a) oath or affirmation of the party or of someone having knowledge of the facts stated; or

(b) except as to an affidavit, including the following signed and dated declaration: "I declare that the statements above are true to the best of my information, knowledge, and belief."

In addition to the sanctions provided by subrule (E), a person who knowingly makes a false declaration under subrule (B)(2)(b) may be found in contempt of court.

(C) Signature.

(1) Requirement. Every document of a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney must sign the document.

(2) Failure to Sign. If a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party.

(D) Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that

(1) he or she has read the document;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(E) Sanctions for Violation. If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

(F) Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages.

Rule 2.115 Motion to Correct or to Strike Pleadings

(A) Motion for More Definite Statement. If a pleading is so vague or ambiguous that it fails to comply with the requirements of these rules, an opposing party may move for a more definite statement before filing a responsive pleading. The motion must point out the defects complained of and the details desired. If the motion is granted and is not obeyed within 14 days after notice of the order, or within such other time

as the court may set, the court may strike the pleading to which the motion was directed or enter an order it deems just.

(B) Motion to Strike. On motion by a party or on the court's own initiative, the court may strike from a pleading redundant, immaterial, impertinent, scandalous, or indecent matter, or may strike all or part of a pleading not drawn in conformity with these rules.

Rule 2.116 Summary Disposition

(A) Judgment on Stipulated Facts.

(1) The parties to a civil action may submit an agreed-upon stipulation of facts to the court.

(2) If the parties have stipulated to facts sufficient to enable the court to render judgment in the action, the court shall do so.

(B) Motion.

(1) A party may move for dismissal of or judgment on all or part of a claim in accordance with this rule. A party against whom a defense is asserted may move under this rule for summary disposition of the defense. A request for dismissal without prejudice under MCL 600.2912c must be made by motion under MCR 2.116 and MCR 2.119.

(2) A motion under this rule may be filed at any time consistent with subrule (D) and subrule (G)(1), but the hearing on a motion brought by a party asserting a claim shall not take place until at least 28 days after the opposing party was served with the pleading stating the claim.

(C) Grounds. The motion may be based on one or more of these grounds, and must specify the grounds on which it is based:

(1) The court lacks jurisdiction over the person or property.

(2) The process issued in the action was insufficient.

(3) The service of process was insufficient.

(4) The court lacks jurisdiction of the subject matter.

(5) The party asserting the claim lacks the legal capacity to sue.

(6) Another action has been initiated between the same parties involving the same claim.

(7) The claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.

(8) The opposing party has failed to state a claim on which relief can be granted.

(9) The opposing party has failed to state a valid defense to the claim asserted against him or her.

(10) Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.

(D) Time to Raise Defenses and Objections. The grounds listed in subrule (C) must be raised as follows:

(1) The grounds listed in subrule (C)(1), (2), and (3) must be raised in a party's first motion under this rule or in the party's responsive pleading, whichever is filed first, or they are waived.

(2) The grounds listed in subrule (C)(5), (6), and (7) must be raised in a party's responsive pleading, unless the grounds are stated in a motion filed under this rule prior to the party's first responsive pleading. Amendment of a responsive pleading is governed by MCR 2.118.

(3) The grounds listed in subrule (C)(4) and the ground of governmental immunity may be raised at any time, regardless of whether the motion is filed after the expiration of the period in which to file dispositive motions under a scheduling order entered pursuant to MCR 2.401.

(4) The grounds listed in subrule (C)(8), (9), and (10) may be raised at any time, unless a period in which to file dispositive motions is established under a scheduling order entered pursuant to MCR 2.401. It is within the trial court's discretion to allow a motion filed under this subsection to be considered if the motion is filed after such period.

(E) Consolidation; Successive Motions.

(1) A party may combine in a single motion as many defenses or objections as the party has based on any of the grounds enumerated in this rule.

(2) No defense or objection is waived by being joined with one or more other defenses or objections.

(3) A party may file more than one motion under this rule, subject to the provisions of subrule (F).

(F) Motion or Affidavit Filed in Bad Faith. A party or an attorney found by the court to have filed a motion or an affidavit in violation of the provisions of MCR 2.114 may, in addition to the imposition of other penalties prescribed by that rule, be found guilty of contempt.

(G) Affidavits; Hearing.

(1) Except as otherwise provided in this subrule, MCR 2.119 applies to motions brought under this rule.

(a) Unless a different period is set by the court,

(i) a written motion under this rule with supporting brief and any affidavits must be filed and served at least 21 days before the time set for the hearing, and

(ii) any response to the motion (including brief and any affidavits) must be filed and served at least 7 days before the hearing.

(b) If the court sets a different time for filing and serving a motion or a response, its authorization must be endorsed in writing on the face of the notice of hearing or made by separate order.

(c) A copy of a motion or response (including brief and any affidavits) filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked JUDGE'S COPY on the cover sheet; that notation may be handwritten.

(2) Except as to a motion based on subrule (C)(8) or (9), affidavits, depositions, admissions, or other documentary evidence may be submitted by a party to support or oppose the grounds asserted in the motion.

(3) Affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion are required

(a) when the grounds asserted do not appear on the face of the pleadings, or

(b) when judgment is sought based on subrule (C)(10).

(4) A motion under subrule (C)(10) must specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact. When a motion under subrule (C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.

(5) The affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties, must be considered by the court when the motion is based on subrule (C)(1)-(7) or (10). Only the pleadings may be considered when the motion is based on subrule (C)(8) or (9).

(6) Affidavits, depositions, admissions, and documentary evidence offered in support of or in opposition to a motion based on subrule (C)(1)-(7) or (10) shall only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion.

(H) Affidavits Unavailable.

(1) A party may show by affidavit that the facts necessary to support the party's position cannot be presented because the facts are known only to persons whose affidavits the party cannot procure. The affidavit must

(a) name these persons and state why their testimony cannot be procured, and

(b) state the nature of the probable testimony of these persons and the reason for the party's belief that these persons would testify to those facts.

(2) When this kind of affidavit is filed, the court may enter an appropriate order, including an order

(a) denying the motion, or

(b) allowing additional time to permit the affidavit to be supported by further affidavits, or by depositions, answers to interrogatories, or other discovery.

(I) Disposition by Court; Immediate Trial.

(1) If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay.

(2) If it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party.

(3) A court may, under proper circumstances, order immediate trial to resolve any disputed issue of fact, and judgment may be entered forthwith if the proofs show that a party is entitled to judgment on the facts as determined by the court. An immediate trial may be ordered if the grounds asserted are based on subrules (C)(1) through (C)(6), or if the motion is based on subrule (C)(7) and a jury trial as of right has not been demanded on or before the date set for hearing. If the motion is based on subrule (C)(7) and a jury trial has been demanded, the court may order immediate trial, but must afford the parties a jury trial as to issues raised by the motion as to which there is a right to trial by jury.

(4) The court may postpone until trial the hearing and decision on a matter involving disputed issues of fact brought before it under this rule.

(5) If the grounds asserted are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified.

(J) Motion Denied; Case Not Fully Adjudicated on Motion.

(1) If a motion under this rule is denied, or if the decision does not dispose of the entire action or grant all the relief demanded, the action must proceed to final judgment. The court may:

(a) set the time for further pleadings or amendments required;

(b) examine the evidence before it and, by questioning the attorneys, ascertain what material facts are without substantial controversy, including the extent to which damages are not disputed; and

(c) set the date on which all discovery must be completed.

(2) A party aggrieved by a decision of the court entered under this rule may:

(a) seek interlocutory leave to appeal as provided for by these rules;

(b) claim an immediate appeal as of right if the judgment entered by the court constitutes a final judgment under MCR 2.604(B); or

(c) proceed to final judgment and raise errors of the court committed under this rule in an appeal taken from final judgment.

Rule 2.117 Appearances

(A) Appearance by Party.

(1) A party may appear in an action by filing a notice to that effect or by physically appearing before the court for that purpose. In the latter event, the party must promptly file a written appearance and serve it on all persons entitled to service. The party's address and telephone number must be included in the appearance.

(2) Filing an appearance without taking any other action toward prosecution or defense of the action neither confers nor enlarges the jurisdiction of the court over the party. An appearance entitles a party to receive copies of all pleadings and papers as provided by MCR 2.107(A). In all other respects, the party is treated as if the appearance had not been filed.

(B) Appearance by Attorney.

(1) In General. An attorney may appear by an act indicating that the attorney represents a party in the action. An appearance by an attorney for a party is deemed an appearance by the party. Unless a particular rule indicates otherwise, any act required to be performed by a party may be performed by the attorney representing the party.

(2) Notice of Appearance.

(a) If an appearance is made in a manner not involving the filing of a paper with the court, the attorney must promptly file a written appearance and serve it on the parties entitled to service. The attorney's address and telephone number must be included in the appearance.

(b) If an attorney files an appearance, but takes no other action toward prosecution or defense of the action, the appearance entitles the attorney to service of pleadings and papers as provided by MCR 2.107(A).

(3) Appearance by Law Firm.

(a) A pleading, appearance, motion, or other paper filed by a law firm on behalf of a client is deemed the appearance of the individual attorney first filing a paper in the action. All notices required by these rules may be served on that individual. That attorney's appearance continues until an order of substitution or withdrawal is entered. This subrule is not intended to prohibit other attorneys in the law firm from appearing in the action on behalf of the party.

(b) The appearance of an attorney is deemed to be the appearance of every member of the law firm. Any attorney in the firm may be required by the court to conduct a court ordered conference or trial.

(C) Duration of Appearance by Attorney.

(1) Unless otherwise stated or ordered by the court, an attorney's appearance applies only in the court in which it is made, or to which the action is transferred, until a final judgment is entered disposing of all claims by or against the party whom the attorney represents and the time for appeal of right has passed. The appearance applies in an appeal taken before entry of final judgment by the trial court.

(2) An attorney who has entered an appearance may withdraw from the action or be substituted for only on order of the court.

Rule 2.118 Amended and Supplemental Pleadings

(A) Amendments.

(1) A party may amend a pleading once as a matter of course within 14 days after being served with a responsive pleading by an adverse party, or within 14 days after serving the pleading if it does not require a responsive pleading.

(2) Except as provided in subrule (A)(1), a party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires.

(3) On a finding that inexcusable delay in requesting an amendment has caused or will cause the adverse party additional expense that would have been unnecessary had the request for amendment been filed earlier, the court may condition the order allowing amendment on the offending party's reimbursing the adverse party for the additional expense, including reasonable attorney fees.

(4) Amendments must be filed in writing, dated, and numbered consecutively, and must comply with MCR 2.113. Unless otherwise indicated, an amended pleading supersedes the former pleading.

(B) Response to Amendments. Within the time prescribed by MCR 2.108, a party served with an amendment to a pleading requiring a response under MCR 2.110(B) must

(1) serve and file a pleading in response to the amended pleading, or

(2) serve and file a notice that the party's pleading filed in response to the opposing party's earlier pleading will stand as the response to the amended pleading.

(C) Amendments to Conform to the Evidence.

(1) When issues not raised by the pleadings are tried by express or implied consent of the parties, they are treated as if they had been raised by the pleadings. In that case, amendment of the pleadings to conform to the evidence and to raise those issues may be made on motion of a party at any time, even after judgment.

(2) If evidence is objected to at trial on the ground that it is not within the issues raised by the pleadings, amendment to conform to that proof shall not be allowed unless the party seeking to amend satisfies the court that the amendment and the admission of the evidence would not prejudice the

objecting party in maintaining his or her action or defense on the merits. The court may grant an adjournment to enable the objecting party to meet the evidence.

(D) Relation Back of Amendments. An amendment that adds a claim or a defense relates back to the date of the original pleading if the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading.

(E) Supplemental Pleadings. On motion of a party the court may, on reasonable notice and on just terms, permit the party to serve a supplemental pleading to state transactions or events that have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a claim for relief or a defense. The court may order the adverse party to plead, specifying the time allowed for pleading.

Rule 2.119 Motion Practice

(A) Form of Motions.

(1) An application to the court for an order in a pending action must be by motion. Unless made during a hearing or trial, a motion must

(a) be in writing,

(b) state with particularity the grounds and authority on which it is based,

(c) state the relief or order sought, and

(d) be signed by the party or attorney as provided in MCR 2.114.

(2) A motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based. Except as permitted by the court, the combined length of any motion and brief, or of a response and brief, may not exceed 20 pages double spaced, exclusive of attachments and exhibits. Quotations and footnotes may be single-spaced. At least one-inch margins must be used, and printing shall not be smaller than 12-point type. A copy of a motion or response (including brief) filed under this rule must be provided by counsel to the office of the judge hearing the motion. The judge's copy must be clearly marked judge's copy on the cover sheet; that notation may be handwritten.

(3) A motion and notice of the hearing on it may be combined in the same document.

(4) If a contested motion is filed after rejection of a proposed order under subrule (D), a copy of the rejected order and an affidavit establishing the rejection must be filed with the motion.

(B) Form of Affidavits.

(1) If an affidavit is filed in support of or in opposition to a motion, it must:

(a) be made on personal knowledge;

(b) state with particularity facts admissible as evidence establishing or denying the grounds stated in the motion; and

(c) show affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated in the affidavit.

(2) Sworn or certified copies of all papers or parts of papers referred to in an affidavit must be attached to the affidavit unless the papers or copies:

(a) have already been filed in the action;

(b) are matters of public record in the county in which the action is pending;

(c) are in the possession of the adverse party, and this fact is stated in the affidavit or the motion; or

(d) are of such nature that attaching them would be unreasonable or impracticable, and this fact and the reasons are stated in the affidavit or the motion.

(C) Time for Service and Filing of Motions and Responses.

(1) Unless a different period is set by these rules or by the court for good cause, a written motion (other than one that may be heard ex parte), notice of the hearing on the motion, and any supporting brief or affidavits must be served as follows:

(a) at least 9 days before the time set for the hearing, if served by mail, or

(b) at least 7 days before the time set for the hearing, if served by delivery under MCR 2.107(C)(1) or (2).

(2) Unless a different period is set by these rules or by the court for good cause, any response to a motion (including a brief or affidavits) required or permitted by these rules must be served as follows:

(a) at least 5 days before the hearing, if served by mail, or

(b) at least 3 days before the hearing, if served by delivery under MCR 2.107(C)(1) or (2).

(3) If the court sets a different time for serving a motion or response its authorization must be endorsed in writing on the face of the notice of hearing or made by separate order.

(4) Unless the court sets a different time, a motion must be filed at least 7 days before the hearing, and any response to a motion required or permitted by these rules must be filed at least 3 days before the hearing.

(D) Uncontested Orders.

(1) Before filing a motion, a party may serve on the opposite party a copy of a proposed order and a request to stipulate to the court's entry of the proposed order.

(2) On receipt of a request to stipulate, a party may

(a) stipulate to the entry of the order by signing the following statement at the end of the proposed order: "I stipulate to the entry of the above order"; or

(b) waive notice and hearing on the entry of an order by signing the following statement at the end of the proposed order: "Notice and hearing on entry of the above order is waived."

A proposed order is deemed rejected unless it is stipulated to or notice and hearing are waived within 7 days after it is served.

(3) If the parties have stipulated to the entry of a proposed order or waived notice and hearing, the court may enter the order. If the court declines to enter the order, it shall notify the moving party that a hearing on the motion is required. The matter then proceeds as a contested motion under subrule (E).

(4) The moving party must serve a copy of an order entered by the court pursuant to subrule (D)(3) on the parties entitled to notice under MCR 2.107, or notify them that the court requires the matter to be heard as a contested motion.

(5) Notwithstanding the provisions of subrule (D)(3), stipulations and orders for adjournment are governed by MCR 2.503.

(E) Contested Motions.

(1) Contested motions should be noticed for hearing at the time designated by the court for the hearing of motions. A motion will be heard on the day for which it is noticed, unless the court otherwise directs. If a motion cannot be heard on the day it is noticed, the court may schedule a new hearing date or the moving party may renotice the hearing.

(2) When a motion is based on facts not appearing of record, the court may hear the motion on affidavits presented by the parties, or may direct that the motion be heard wholly or partly on oral testimony or deposition.

(3) A court may, in its discretion, dispense with or limit oral arguments on motions, and may require the parties to file briefs in support of and in opposition to a motion.

(4) Appearance at the hearing is governed by the following:

(a) A party who, pursuant to subrule (D)(2), has previously rejected the proposed order before the court must either

(i) appear at the hearing held on the motion, or

(ii) before the hearing, file a response containing a concise statement of reasons in opposition to the motion and supporting authorities.

A party who fails to comply with this subrule is subject to assessment of costs under subrule (E)(4)(c).

(b) Unless excused by the court, the moving party must appear at a hearing on the motion. A moving party who fails to appear is subject to assessment

of costs under subrule (E)(4)(c); in addition, the court may assess a penalty not to exceed $100, payable to the clerk of the court.

(c) If a party violates the provisions of subrule (E)(4)(a) or (b), the court shall assess costs against the offending party, that party's attorney, or both, equal to the expenses reasonably incurred by the opposing party in appearing at the hearing, including reasonable attorney fees, unless the circumstances make an award of expenses unjust.

(F) Motions for Rehearing or Reconsideration.

(1) Unless another rule provides a different procedure for reconsideration of a decision (see, e.g., MCR 2.604[A], 2.612), a motion for rehearing or reconsideration of the decision on a motion must be served and filed not later than 21 days after entry of an order deciding the motion.

(2) No response to the motion may be filed, and there is no oral argument, unless the court otherwise directs.

(3) Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

(G) Motion Fees. The following provisions apply to actions in which a motion fee is required:

(1) A motion fee must be paid on the filing of any request for an order in a pending action, whether the request is entitled "motion," "petition," "application," or otherwise.

(2) The clerk shall charge a single motion fee for all motions filed at the same time in an action regardless of the number of separately captioned documents filed or the number of distinct or alternative requests for relief included in the motions.

(3) A motion fee may not be charged:

(a) in criminal cases;

(b) for a notice of settlement of a proposed judgment or order under MCR 2.602(B);

(c) for a request for an order waiving fees under MCR 2.002 or MCL 600.2529(4) or MCL 600.8371(6);

(d) if the motion is filed at the same time as another document in the same action as to which a fee is required; or

(e) for entry of an uncontested order under subrule (D).

Subchapter 2.200 Parties; Joinder of Claims and Parties; Venue; Transfer of Actions

Rule 2.201 Parties Plaintiff and Defendant; Capacity

(A) Designation of Parties. The party who commences a civil action is designated as plaintiff and the adverse party as defendant. In an appeal the relative position of the parties and their designations as plaintiff and defendant are the same, but they are also designated as appellant and appellee.

(B) Real Party in Interest. An action must be prosecuted in the name of the real party in interest, subject to the following provisions:

(1) A personal representative, guardian, conservator, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought.

(2) An action on the bond of a public officer required to give bond to the people of the state may be brought in the name of the person to whom the right on the bond accrues.

(3) An action on a bond, contract, or undertaking made with an officer of the state or of a governmental unit, including but not limited to a public, municipal, quasi-municipal, or governmental corporation, an unincorporated board, a public body, or a political subdivision, may be brought in the name of the state or the governmental unit for whose benefit the contract was made.

(4) An action to prevent illegal expenditure of state funds or to test the constitutionality of a statute relating to such an expenditure may be brought:

(a) in the name of a domestic nonprofit corporation organized for civic, protective, or improvement purposes; or

(b) in the names of at least 5 residents of Michigan who own property assessed for direct taxation by the county where they reside.

(C) Capacity to Sue or be Sued.

(1) A natural person may sue or be sued in his or her own name.

(2) A person conducting a business under a name subject to certification under the assumed name statute may be sued in that name in an action arising out of the conduct of that business.

(3) A partnership, partnership association, or unincorporated voluntary association having a distinguishing name may sue or be sued in its partnership or association name, in the names of any of its members designated as such, or both.

(4) A domestic or a foreign corporation may sue or be sued in its corporate name, unless a statute provides otherwise.

(5) Actions to which the state or a governmental unit (including but not limited to a public, municipal, quasi-municipal, or governmental corporation, an unincorporated board, a public body, or a political subdivision) is a party may be brought by or against the state or governmental unit in its own name, or in the name of an officer authorized to sue or be sued on its behalf. An officer of the state or governmental unit must be sued in the officer's official capacity to enforce the performance of an official duty. An officer who sues or is sued in his or her official capacity may be described as a party by official title and not by name, but the court may require the name to be added.

(D) Unknown Parties; Procedure.

(1) Persons who are or may be interested in the subject matter of an action, but whose names cannot be ascertained on diligent inquiry, may be made parties by being described as:

(a) unknown claimants;

(b) unknown owners; or

(c) unknown heirs, devisees, or assignees of a deceased person who may have been interested in the subject matter of the action.

If it cannot be ascertained on diligent inquiry whether a person who is or may be interested in the subject matter of the action is alive or dead, what disposition the person may have made of his or her interest, or where the person resides if alive, the person and everyone claiming under him or her may be made parties by naming the person and adding "or [his or her] unknown heirs, devisees, or assignees."

(2) The names and descriptions of the persons sought to be made parties, with a statement of the efforts made to identify and locate them, must be stated in the complaint and verified by oath or affirmation by the plaintiff or someone having knowledge of the facts in the plaintiff's behalf. The court may require a more specific description to be made by amendment.

(3) A publication giving notice to persons who cannot be personally served must include the description of unknown persons as set forth in the complaint or amended complaint.

(4) The publication and all later proceedings in the action are conducted as if the unknown parties were designated by their proper names. The judgment rendered determines the nature, validity, and extent of the rights of all parties.

(5) A person desiring to appear and show his or her interest in the subject matter of the action must proceed under MCR 2.209. Subject to that rule, the person may be made a party in his or her proper name.

(E) Minors and Incompetent Persons. This subrule does not apply to proceedings under chapter 5.

(1) Representation.

(a) If a minor or incompetent person has a conservator, actions may be brought and must be defended by the conservator on behalf of the minor or incompetent person.

(b) If a minor or incompetent person does not have a conservator to represent the person as plaintiff, the court shall appoint a competent and responsible person to appear as next friend on his or her behalf, and the next friend is responsible for the costs of the action.

(c) If the minor or incompetent person does not have a conservator to represent the person as defendant, the action may not proceed until the court appoints a guardian ad litem, who is not responsible for the costs of the action unless, by reason of personal misconduct, he or she is specifically charged costs by the court. It is unnecessary to appoint a representative for a minor accused of a civil infraction.

(2) Appointment of Representative.

(a) Appointment of a next friend or guardian ad litem shall be made by the court as follows:

(i) if the party is a minor 14 years of age or older, on the minor's nomination, accompanied by a written consent of the person to be appointed;

(ii) if the party is a minor under 14 years of age or an incompetent person, on the nomination of the party's next of kin or of another relative or friend the court deems suitable, accompanied by a written consent of the person to be appointed; or

(iii) if a nomination is not made or approved within 21 days after service of process, on motion of the court or of a party.

(b) The court may refuse to appoint a representative it deems unsuitable.

(c) The order appointing a person next friend or guardian ad litem must be promptly filed with the clerk of the court.

(3) Security.

(a) Except for costs and expenses awarded to the next friend or guardian ad litem or the represented party, a person appointed under this subrule may not receive money or property belonging to the minor or incompetent party or awarded to that party in the action, unless he or she gives security as the court directs.

(b) The court may require that the conservator representing a minor or incompetent party give security as the court directs before receiving the party's money or property.

(4) Incompetency While Action Pending. A party who becomes incompetent while an action is pending may be represented by his or her conservator, or the court may appoint a next friend or guardian ad litem as if the action had been commenced after the appointment.

Rule 2.202 Substitution of Parties

(A) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties.

(a) A motion for substitution may be made by a party, or by the successor or representative of the deceased party.

(b) Unless a motion for substitution is made within 91 days after filing and service of a statement of the fact of the death, the action must be dismissed as to the deceased party, unless the party seeking substitution shows that there would be no prejudice to any other party from allowing later substitution.

(c) Service of the statement or motion must be made on the parties as provided in MCR 2.107, and on persons not parties as provided in MCR 2.105.

(2) If one or more of the plaintiffs or one or more of the defendants in an action dies, and the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. A party or attorney who learns that a party has died must promptly file a notice of the death.

(B) Transfer or Change of Interest. If there is a change or transfer of interest, the action may be continued by or against the original party in his or her original capacity, unless the court, on motion supported by affidavit, directs that the person to whom the interest is transferred be substituted for or joined with the original party, or directs that the original party be made a party in another capacity. Notice must be given as provided in subrule (A)(1)(c).

(C) Public Officers; Death or Separation From Office. When an officer of the class described in MCR 2.201(C)(5) is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against the officer's successor without a formal order of substitution.

(D) Substitution at Any Stage. Substitution of parties under this rule may be ordered by the court either before or after judgment or by the Court of Appeals or Supreme Court pending appeal. If substitution is ordered, the court may require additional security to be given.

Rule 2.203 Joinder of Claims, Counterclaims, and Cross-Claims

(A) Compulsory Joinder. In a pleading that states a claim against an opposing party, the pleader must join every claim that the pleader has against that opposing party at the time of serving the pleading, if it arises out of the transaction or occurrence that is the subject matter of the action and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

(B) Permissive Joinder. A pleader may join as either independent or alternate claims as many claims, legal or equitable, as the pleader has against an opposing party. If a claim is one previously cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court may grant relief only in accordance with the substantive rights of the parties.

(C) Counterclaim Exceeding Opposing Claim. A counterclaim may, but need not, diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(D) Cross-Claim Against Co-Party. A pleading may state as a cross-claim a claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or that relates to property that is the subject matter of the original action. The cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(E) Time for Filing Counterclaim or Cross-Claim. A counterclaim or cross-claim must be filed with the answer or filed as an amendment in the manner provided by MCR 2.118. If a motion to amend to state a counterclaim or cross-claim is denied, the litigation of that claim in another action is not precluded unless the court specifies otherwise.

(F) Separate Trials; Separate Judgment. If the court orders separate trials as provided in MCR 2.505(B), judgment on a claim, counterclaim, or cross-claim may be rendered in accordance with the terms of MCR 2.604 when the court has jurisdiction to do so. The judgment may be rendered even if the claims of the opposing party have been dismissed or otherwise disposed of.

Rule 2.204 Third-Party Practice

(A) When Defendant May Bring in Third Party.

(1) Subject to the provisions of MCL 500.3030, any time after commencement of an action, a defending party, as a third-party plaintiff, may serve a summons and complaint on a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim. The third-party plaintiff need not obtain leave to make the service if the third-party complaint is filed within 21 days after the third-party plaintiff's original answer was filed. Otherwise, leave on motion with notice to all parties is required. Unless the court orders otherwise, the summons issued on the filing of a third-party complaint is valid for 21 days after it is issued, and must include the expiration date. See MCR 2.102(B)(8).

(2) Within the time provided by MCR 2.108(A)(1)-(3), the person served with the summons and third-party complaint (the "third-party defendant") must respond to the third-party plaintiff's claim as provided in MCR 2.111, and may file counterclaims against the third-party plaintiff and cross-claims against other parties as provided in MCR 2.203. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert a claim against the plaintiff

arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(3) The plaintiff may assert a claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant must respond as provided in MCR 2.111 and may file counterclaims and cross-claims as provided in MCR 2.203.

(4) A party may move for severance, separate trial, or dismissal of the third-party claim. The court may direct entry of a final judgment on either the original claim or the third-party claim, in accordance with MCR 2.604(B).

(5) A third-party defendant may proceed under this rule against a person not a party to the action who is or may be liable to the third-party defendant for all or part of a claim made in the action against the third-party defendant.

(B) When Plaintiff May Bring in Third Party. A plaintiff against whom a claim or counterclaim is asserted may bring in a third party under this rule to the same extent as a defendant.

(C) Exception; Small Claims. The provisions of this rule do not apply to actions in the small claims division of the district court.

Rule 2.205 Necessary Joinder of Parties

(A) Necessary Joinder. Subject to the provisions of subrule (B) and MCR 3.501, persons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be made parties and aligned as plaintiffs or defendants in accordance with their respective interests.

(B) Effect of Failure to Join. When persons described in subrule (A) have not been made parties and are subject to the jurisdiction of the court, the court shall order them summoned to appear in the action, and may prescribe the time and order of pleading. If jurisdiction over those persons can be acquired only by their consent or voluntary appearance, the court may proceed with the action and grant appropriate relief to persons who are parties to prevent a failure of justice. In determining whether to proceed, the court shall consider

(1) whether a valid judgment may be rendered in favor of the plaintiff in the absence of the person not joined;

(2) whether the plaintiff would have another effective remedy if the action is dismissed because of the nonjoinder;

(3) the prejudice to the defendant or to the person not joined that may result from the nonjoinder; and

(4) whether the prejudice, if any, may be avoided or lessened by a protective order or a provision included in the final judgment.

Notwithstanding the failure to join a person who should have been joined, the court may render a judgment against the plaintiff whenever it is determined that the plaintiff is not entitled to relief as a matter of substantive law.

(C) Names of Omitted Persons and Reasons for Nonjoinder to be Pleaded. In a pleading in which relief is asked, the pleader must state the names, if known, of persons who are not joined, but who ought to be parties if complete relief is to be accorded to those already parties, and must state why they are not joined.

Rule 2.206 Permissive Joinder of Parties

(A) Permissive Joinder.

(1) All persons may join in one action as plaintiffs

(a) if they assert a right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if a question of law or fact common to all of the plaintiffs will arise in the action; or

(b) if their presence in the action will promote the convenient administration of justice.

(2) All persons may be joined in one action as defendants

(a) if there is asserted against them jointly, severally, or in the alternative, a right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if a question of law or fact common to all of the defendants will arise in the action; or

(b) if their presence in the action will promote the convenient administration of justice.

(3) A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be rendered for one or more of the parties against one or more of the parties as the rights and liabilities of the parties are determined.

(B) Separate Trials. The court may enter orders to prevent a party from being embarrassed, delayed, or put to expense by the joinder of a person against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or enter other orders to prevent delay or prejudice.

Rule 2.207 Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not a ground for dismissal of an action. Parties may be added or dropped by order of the court on motion of a party or on the court's own initiative at any stage of the action and on terms that are just. When the presence of persons other than the original parties to the action is required to grant complete relief in the determination of a counterclaim or cross-claim, the court shall order those persons to be brought in as defendants if jurisdiction over them can be obtained. A claim against a party may be severed and proceeded with separately.

Rule 2.209 Intervention

(A) Intervention of Right. On timely application a person has a right to intervene in an action:

(1) when a Michigan statute or court rule confers an unconditional right to intervene;

(2) by stipulation of all the parties; or

(3) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(B) Permissive Intervention. On timely application a person may intervene in an action

(1) when a Michigan statute or court rule confers a conditional right to intervene; or

(2) when an applicant's claim or defense and the main action have a question of law or fact in common.

In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(C) Procedure. A person seeking to intervene must apply to the court by motion and give notice in writing to all parties under MCR 2.107. The motion must

(1) state the grounds for intervention, and

(2) be accompanied by a pleading stating the claim or defense for which intervention is sought.

(D) Notice to Attorney General. When the validity of a Michigan statute or a rule or regulation included in the Michigan Administrative Code is in question in an action to which the state or an officer or agency of the state is not a party, the court may require that notice be given to the Attorney General, specifying the pertinent statute, rule, or regulation.

Rule 2.221 Motion for Change of Venue

(A) Time to File. A motion for change of venue must be filed before or at the time the defendant files an answer.

(B) Late Motion. Untimeliness is not a ground for denial of a motion filed after the answer if the court is satisfied that the facts on which the motion is based were not and could not with reasonable diligence have been known to the moving party more than 14 days before the motion was filed.

(C) Waiver. An objection to venue is waived if it is not raised within the time limits imposed by this rule.

Rule 2.222 Change of Venue; Venue Proper

(A) Grounds. The court may order a change of venue of a civil action, or of an appeal from an order or decision of a state board, commission, or agency authorized to promulgate rules or regulations, for the convenience of parties and witnesses or when an impartial trial cannot be had where the action is pending. In

the case of appellate review of administrative proceedings, venue may also be changed for the convenience of the attorneys.

(B) Motion Required. If the venue of the action is proper, the court may not change the venue on its own initiative, but may do so only on motion of a party.

(C) Multiple Claims. If multiple claims are joined in an action, and the venue of one or more of them would have been improper if the claims had been brought in separate actions, the defendant may move to separate the claims and to transfer those as to which venue would have been improper. The court has discretion to

(1) order the transfer of all claims,

(2) order the separation and transfer moved for, or

(3) retain the entire action for trial.

(D) Filing and Jury Fees After Change of Venue.

(1) At or before the time the order changing venue is entered, the party that moved for change of venue shall tender a negotiable instrument in the amount of the applicable filing fee, payable to the court to which the case is to be transferred. The transferring court shall send the negotiable instrument with the case documents to the transferee court.

(2) If the jury fee has been paid, the clerk of the transferring court shall forward it to the clerk of the court to which the action is transferred.

(E) In tort actions filed between October 1, 1986, and March 28, 1996, if venue is changed because of hardship or inconvenience, the action may be transferred only to the county in which the moving party resides.

Rule 2.223 Change of Venue; Venue Improper

(A) Motion; Court's Own Initiative. If the venue of a civil action is improper, the court

(1) shall order a change of venue on timely motion of a defendant, or

(2) may order a change of venue on its own initiative with notice to the parties and opportunity for them to be heard on the venue question.

If venue is changed because the action was brought where venue was not proper, the action may be transferred only to a county in which venue would have been proper.

(B) Costs; Fees.

(1) The court shall order the change at the plaintiff's cost, which shall include the statutory filing fee applicable to the court to which the action is transferred, and which may include reasonable compensation for the defendant's expense, including reasonable attorney fees, in attending in the wrong court.

(2) After transfer, no further proceedings may be had in the action until the costs and expenses allowed under this rule have been paid. If they are not paid within 56 days from the date of the order changing venue, the action must be dismissed by the court to which it was transferred.

(3) If the jury fee has been paid, the clerk of the transferring court shall forward it to the clerk of the court to which the action is transferred.

(4) MCL 600.1653 applies to tort actions filed on or after October 1, 1986.

Rule 2.224 Change of Venue in Tort Actions

[Repealed November 6, 1996, effective February 1, 1997–Reporter.]

Rule 2.225 Joinder of Party to Control Venue

(A) Joinder Not in Good Faith. On a defendant's motion, venue must be changed on a showing that the venue of the action is proper only because of the joinder of a codefendant who was not joined in good faith but only to control venue.

(B) Transfer Costs. A transfer under this rule must be made at the plaintiff's cost, which shall include the statutory filing fee applicable to the court to which the action is transferred, and which may include reasonable compensation for the defendant's expense, including reasonable attorney fees, necessary to accomplish the transfer.

(C) Jury Fee. If the jury fee has been paid, the clerk of the transferring court shall forward it to the clerk of the court to which the action is transferred.

Rule 2.226 Change of Venue; Orders

The court ordering a change of venue shall enter all necessary orders pertaining to the certification and transfer of the action to the court to which the action is transferred.

Rule 2.227 Transfer of Actions on Finding of Lack of Jurisdiction

(A) Transfer to Court Which Has Jurisdiction.

(1) When the court in which a civil action is pending determines that it lacks jurisdiction of the subject matter of the action, but that some other Michigan court would have jurisdiction of the action, the court may order the action transferred to the other court in a place where venue would be proper. If the question of jurisdiction is raised by the court on its own initiative, the action may not be transferred until the parties are given notice and an opportunity to be heard on the jurisdictional issue.

(2) As a condition of transfer, the court shall require the plaintiff to pay the statutory filing fee applicable to the court to which the action is to be transferred, and to pay reasonable compensation for the defendant's expense, including reasonable attorney fees, in attending in the wrong court.

(3) If the plaintiff does not pay the filing fee to the clerk of the court transferring the action and submit proof to the clerk of the payment of any other costs imposed within 28 days after entry of the order of transfer, the clerk shall notify the judge who entered the order, and the judge shall dismiss the action for lack of jurisdiction. The clerk shall notify the parties of the entry of the dismissal.

(4) After the plaintiff pays the fee and costs, the clerk of the court transferring the action shall promptly forward to the clerk of the court to which the action is transferred the original papers filed in the action and the filing fee and shall send written notice of this action to the parties. If part of the action remains pending in the transferring court, certified copies of the papers filed may be forwarded, with the cost to be paid by the plaintiff.

(B) Procedure After Transfer.

(1) The action proceeds in the court to which it is transferred as if it had been originally filed there. If further pleadings are required or allowed, the time for filing them runs from the date the clerk sends notice that the file has been forwarded under subrule (A)(4). The court to which the action is transferred may order the filing of new or amended pleadings.

(2) If a defendant had not been served with process at the time the action was transferred, the plaintiff must obtain the issuance of a new summons by the court to which the action is transferred.

(3) A waiver of jury trial in the court in which the action was originally filed is ineffective after transfer. A party who had waived trial by jury may demand a jury trial after transfer by filing a demand and paying the applicable jury fee within 28 days after the clerk sends the notice that the file has been forwarded under subrule (A)(4). A demand for a jury trial in the court in which the action was originally filed is preserved after transfer. If the jury fee had been paid, the clerk shall forward it with the file to the clerk of the court to which the action is transferred.

(C) Relation to Other Transfer Provisions. This rule does not affect transfers (pursuant to other rules or statutes) of actions over which the transferring court had jurisdiction.

Subchapter 2.300 Discovery

Rule 2.301 Completion of Discovery

(A) In circuit and probate court, the time for completion of discovery shall be set by an order entered under MCR 2.401(B)(2)(a).

(B) In an action in which discovery is available only on leave of the court or by stipulation, the order or stipulation shall set a time for completion of discovery. A time set by stipulation may not delay the scheduling of the action for trial.

(C) After the time for completion of discovery, a deposition of a witness taken solely for the purpose of preservation of testimony may be taken at any time before commencement of trial without leave of court.

Rule 2.302 General Rules Governing Discovery

(A) Availability of Discovery.

(1) After commencement of an action, parties may obtain discovery by any means provided in subchapter 2.300 of these rules.

(2) In actions in the district court, no discovery is permitted before entry of judgment except by leave of the court or on the stipulation of all parties. A motion for discovery may not be filed unless the discovery sought has previously been requested and refused.

(3) Notwithstanding the provisions of this or any other rule, discovery is not permitted in actions in the small claims division of the district court or in civil infraction actions.

(B) Scope of Discovery.

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, custody, condition, and location of books, documents, or other tangible things, or electronically stored information and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of an insurance agreement under which a person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible at trial. For purposes of this subrule, an application for insurance is not part of an insurance agreement.

(3) Trial Preparation; Materials.

(a) Subject to the provisions of subrule (B)(4), a party may obtain discovery of documents and tangible things otherwise discoverable under subrule (B)(1) and prepared in anticipation of litigation or for trial by or for another party or another party's representative (including an attorney, consultant, surety, indemnitor, insurer, or agent) only on a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(b) Without the showing required by subrule (B)(3)(a), a party or a nonparty may obtain a statement concerning the action or its subject matter previously made by the person making the request. A nonparty whose request is refused may move for a court order. The provisions of MCR 2.313(A)(5) apply to the award of expenses incurred in relation to the motion.

(c) For purposes of subrule (B)(3)(b), a statement previously made is

(i) a written statement signed or otherwise adopted or approved by the person making it; or

(ii) a stenographic, mechanical, electrical, or other recording, or a transcription of it, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation; Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subrule (B)(1) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(a)(i) A party may through interrogatories require another party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter about which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) A party may take the deposition of a person whom the other party expects to call as an expert witness at trial.

(iii) On motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions (pursuant to subrule [B][4][C]) concerning fees and expenses as the court deems appropriate.

(b) A party may not discover the identity of and facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, except

(i) as provided in MCR 2.311, or

(ii) where an order has been entered on a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(c) Unless manifest injustice would result

(i) the court shall require that the party seeking discovery under subrules (B)(4)(a)(ii) or (iii) or (B)(4)(b) pay the expert a reasonable fee for time spent in a deposition, but not including preparation time; and

(ii) with respect to discovery obtained under subrule (B)(4)(a)(ii) or (iii), the court may require, and with respect to discovery obtained under subrule (B)(4)(b) the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(d) A party may depose a witness that he or she expects to call as an expert at trial. The deposition may be taken at any time before trial on reasonable notice to the opposite party, and may be offered as evidence at trial as provided in MCR 2.308(A). The court need not adjourn the trial because of the unavailability of expert witnesses or their depositions.

(5) Electronically Stored Information. A party has the same obligation to preserve electronically stored information as it does for all other types of information. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

(6) Limitation of Discovery of Electronic Materials. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of MCR 2.302(C). The court may specify conditions for the discovery.

(7) Information Inadvertently Produced. If information that is subject to a claim of privilege or of protection as trial-preparation material is produced in discovery, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies

it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

(C) Protective Orders. On motion by a party or by the person from whom discovery is sought, and on reasonable notice and for good cause shown, the court in which the action is pending may issue any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following orders:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition, after being sealed, be opened only by order of the court;

(7) that a deposition shall be taken only for the purpose of discovery and shall not be admissible in evidence except for the purpose of impeachment;

(8) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(9) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on terms and conditions as are just, order that a party or person provide or permit discovery. The provisions of MCR 2.313(A)(5) apply to the award of expenses incurred in relation to the motion.

(D) Sequence and Timing of Discovery. Unless the court orders otherwise, on motion, for the convenience of parties and witnesses and in the interests of justice, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay another party's discovery.

(E) Supplementation of Responses.

(1) Duty to Supplement. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information acquired later, except as follows:

(a) A party is under a duty seasonably to supplement the response with respect to a question directly addressed to

(i) the identity and location of persons having knowledge of discoverable matters; and

(ii) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony.

(b) A party is under a duty seasonably to amend a prior response if the party obtains information on the basis of which the party knows that

(i) the response was incorrect when made; or

(ii) the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(c) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time before trial through new requests for supplementation of prior responses.

(2) Failure to Supplement. If the court finds, by way of motion or otherwise, that a party has not seasonably supplemented responses as required by this subrule the court may enter an order as is just, including an order providing the sanctions stated in MCR 2.313(B), and, in particular, MCR 2.313(B)(2)(b).

(F) Stipulations Regarding Discovery Procedure. Unless the court orders otherwise, the parties may by written stipulation:

(1) provide that depositions may be taken before any person, at any time or place, on any notice, and in any manner, and when so taken may be used like other depositions; and

(2) modify the procedures of these rules for other methods of discovery, except that stipulations extending the time within which discovery may be sought or for responses to discovery may be made only with the approval of the court.

(G) Signing of Discovery Requests, Responses, and Objections; Sanctions.

(1) In addition to any other signature required by these rules, every request for discovery and every response or objection to such a request made by a party represented by an attorney shall be signed by at least one attorney of record. A party who is not represented by an attorney must sign the request, response, or objection.

(2) If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and another party need not take any action with respect to it until it is signed.

(3) The signature of the attorney or party constitutes a certification that he or she has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is:

(a) consistent with these rules and warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law;

(b) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(c) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(4) If a certification is made in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable attorney fees.

(H) Filing and Service of Discovery Materials.

(1) Unless a particular rule requires filing of discovery materials, requests, responses, depositions, and other discovery materials may not be filed with the court except as follows:

(a) If discovery materials are to be used in connection with a motion, they must either be filed separately or be attached to the motion or an accompanying affidavit;

(b) If discovery materials are to be used at trial they must be either filed or made an exhibit;

(c) The court may order discovery materials to be filed.

(2) Copies of discovery materials served under these rules must be served on all parties to the action, unless the court has entered an order under MCR 2.107(F).

(3) On appeal, only discovery materials that were filed or made exhibits are part of the record on appeal.

(4) Removal and destruction of discovery materials are governed by MCR 2.316.

Rule 2.303 Depositions Before Action or Pending Appeal

(A) Before Action.

(1) Petition. A person who desires to perpetuate his or her own testimony or that of another person, for use as evidence and not for the purpose of discovery, regarding a matter that may be cognizable in a Michigan court may file a verified petition in the circuit court of the county of the residence of an expected adverse party. The petition must be entitled in the name of the petitioner and must show:

(a) that the petitioner expects to be a party to an action cognizable in a Michigan court but is presently unable to bring it or cause it to be brought and the reasons why;

(b) the subject matter of the expected action and the petitioner's interest in it;

(c) the facts sought to be established by the proposed testimony and the reasons for desiring to perpetuate it;

(d) the names or a description of the persons that the petitioner expects will be adverse parties and their addresses so far as known; and

(e) the names and addresses of the persons to be examined and the substance of the testimony that the petitioner expects to elicit from each.

The petition must ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall serve a notice on each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a specified time and place, for the order described in the petition. At least 21 days before the date of hearing, the notice must be served in the manner provided in MCR 2.105 for service of summons. If service cannot be made on an expected adverse party with due diligence, the court may issue an order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in MCR 2.105, an attorney to represent them, and to cross-examine the deponent. If an expected adverse party is a minor or an incompetent person, the law relating to minors and incompetents, including MCR 2.201(E), applies.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall issue an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions are to be taken on oral examination or written interrogatories. The depositions may then be taken in accordance with these rules. In addition the court may issue orders of the character provided for by MCR 2.310 and 2.311.

(4) Use of Deposition.

(a) If a deposition to perpetuate testimony is taken under these rules, it may be used in an action involving the same subject matter subsequently brought in a Michigan court, in accordance with MCR 2.308.

(b) If a deposition to perpetuate testimony has been taken under the Federal Rules of Civil Procedure, or the rules of another state, the court may, if it finds that the deposition was taken in substantial compliance with these rules, allow the deposition to be used as if it had been taken under these rules.

(B) Pending Appeal. If an appeal has been taken from a judgment of a trial court, or before the taking of an appeal if the time for appeal has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use if there are further proceedings in

that court. The party who wishes to perpetuate the testimony may move for leave to take the depositions, with the same notice and service of the motion as if the action were then pending in the trial court. The motion must show

(1) the names and addresses of the persons to be examined and the substance of the testimony that the party expects to elicit from each; and

(2) the reasons for perpetuating their testimony.

If the court finds that the perpetuation of testimony is proper to avoid a failure or delay of justice, it may issue an order allowing the depositions to be taken and may issue orders of the character provided for by MCR 2.310 and 2.311. The depositions may then be taken and used in the same manner and under the same conditions prescribed in these rules for depositions taken in actions pending before the court.

Rule 2.304 Persons Before Whom Depositions May Be Taken

(A) Within the United States. Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions may be taken

(1) before a person authorized to administer oaths by the laws of Michigan, the United States, or the place where the examination is held;

(2) before a person appointed by the court in which the action is pending; or

(3) before a person on whom the parties agree by stipulation under MCR 2.302(F)(1).

A person acting under subrule (A)(2) or (3) has the power to administer oaths, take testimony, and do all other acts necessary to take a deposition.

(B) In Foreign Countries. In a foreign country, depositions may be taken

(1) on notice before a person authorized to administer oaths in the place in which the examination is held, by either the law of that place or of the United States; or

(2) before a person commissioned by the court, and a person so commissioned has the power by virtue of the commission to administer a necessary oath and take testimony; or

(3) pursuant to a letter rogatory.

A commission or a letter rogatory may be issued on motion and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in another manner is impracticable or inconvenient; both a commission and a letter rogatory may be issued in a proper case. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [*name of country*]." Evidence obtained in response to a letter rogatory need not be excluded merely because it is not a verbatim transcript or the testimony was not taken under oath, or because of a similar departure from the requirements for depositions taken within the United States under these rules.

(C) Disqualification for Interest. Unless the parties agree otherwise by stipulation in writing or on the record, a deposition may not be taken before a person who is

(1) a relative or employee of or an attorney for a party,

(2) a relative or employee of an attorney for a party, or

(3) financially interested in the action.

Rule 2.305 Subpoena for Taking Deposition

(A) General Provisions.

(1) After serving the notice provided for in MCR 2.303(A)(2), 2.306(B), or 2.307(A)(2), a party may have a subpoena issued in the manner provided by MCR 2.506 for the person named or described in the notice. Service on a party or a party's attorney of notice of the taking of the deposition of a party, or of a director, trustee, officer, or employee of a corporate party, is sufficient to require the appearance of the deponent; a subpoena need not be issued.

(2) The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated documents or other tangible things relevant to the subject matter of the pending action and within the scope of discovery under MCR 2.302(B). The procedures in MCR 2.310 apply to a party deponent.

(3) A deposition notice and a subpoena under this rule may provide that the deposition is solely for producing documents or other tangible things for inspection and copying, and that the party does not intend to examine the deponent.

(4) A subpoena issued under this rule is subject to the provisions of MCR 2.302(C), and the court in which the action is pending, on timely motion made before the time specified in the subpoena for compliance, may

(a) quash or modify the subpoena if it is unreasonable or oppressive;

(b) enter an order permitted by MCR 2.302(C); or

(c) condition denial of the motion on prepayment by the person on whose behalf the subpoena is issued of the reasonable cost of producing books, papers, documents, or other tangible things.

(5) Service of a subpoena on the deponent must be made as provided in MCR 2.506. A copy of the subpoena must be served on all other parties in the same manner as the deposition notice.

(B) Inspection and Copying of Documents. A subpoena issued under subrule (A) may command production of documents or other tangible things, but the following rules apply:

(1) The subpoena must be served at least 14 days before the time for production. The subpoenaed person may, not later than the time specified in the subpoena for compliance, serve on the party serving the subpoena written objection to inspection or copying of some or all of the designated materials.

(2) If objection is made, the party serving the subpoena is not entitled to inspect and copy the materials without an order of the court in which the action is pending.

(3) The party serving the subpoena may, with notice to the deponent, move for an order compelling production of the designated materials. MCR 2.313(A)(5) applies to motions brought under this subrule.

(C) Place of Examination.

(1) A deponent may be required to attend an examination in the county where the deponent resides, is employed, or transacts business in person, or at another convenient place specified by order of the court.

(2) In an action pending in Michigan, the court may order a nonresident plaintiff or an officer or managing agent of the plaintiff to appear for a deposition at a designated place in Michigan or elsewhere on terms and conditions that are just, including payment by the defendant of the reasonable expenses of travel, meals, and lodging incurred by the deponent in attending.

(3) If it is shown that the deposition of a nonresident defendant cannot be taken in the state where the defendant resides, the court may order the defendant or an officer or managing agent of the defendant to appear for a deposition at a designated place in Michigan or elsewhere on terms and conditions that are just, including payment by the plaintiff of the reasonable expenses of travel, meals, and lodging incurred by the deponent in attending.

(D) Petition to Courts Outside Michigan to Compel Testimony. When the place of examination is in another state, territory, or country, the party desiring to take the deposition may petition a court of that state, territory, or country for a subpoena or equivalent process to require the deponent to attend the examination.

(E) Action Pending in Another State, Territory, or Country. An officer or a person authorized by the laws of another state, territory, or country to take a deposition in Michigan, with or without a commission, in an action pending in a court of that state, territory, or country may petition a court of record in the county in which the deponent resides, is employed, transacts business in person, or is found, for a subpoena to compel the deponent to give testimony. The court may hear and act on the petition with or without notice, as the court directs.

Rule 2.306 Depositions on Oral Examination

(A) When Depositions May Be Taken.

(1) After commencement of the action, a party may take the testimony of a person, including a party, by deposition on oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition before the defendant has had a reasonable time to obtain an attorney. A reasonable time is deemed to have elapsed if:

(a) the defendant has filed an answer;

(b) the defendant's attorney has filed an appearance;

(c) the defendant has served notice of the taking of a deposition or has taken other action seeking discovery;

(d) the defendant has filed a motion under MCR 2.116; or

(e) 28 days have expired after service of the summons and complaint on a defendant or after service made under MCR 2.106.

(2) The deposition of a person confined in prison or of a patient in a state home, institution, or hospital for the mentally ill or mentally handicapped, or any other state hospital, home, or institution, may be taken only by leave of court on terms as the court provides.

(B) Notice of Examination; Subpoena; Production of Documents and Things.

(1) A party desiring to take the deposition of a person on oral examination must give reasonable notice in writing to every other party to the action. The notice must state

(a) the time and place for taking the deposition, and

(b) the name and address of each person to be examined, if known, or, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs.

If the subpoena to be served directs the deponent to produce documents or other tangible things, the designation of the materials to be produced as set forth in the subpoena must be attached to or included in the notice.

(2) On motion for good cause, the court may extend or shorten the time for taking the deposition. The court may regulate the time and order of taking depositions to best serve the convenience of the parties and witnesses and the interests of justice.

(3) The attendance of witness may be compelled by subpoena as provided in MCR 2.305.

(4) The notice to a party deponent may be accompanied by a request for the production of documents and tangible things at the taking of the deposition. MCR 2.310 applies to the request.

(5) In a notice and subpoena, a party may name as the deponent a public or private corporation, partnership, association, or governmental agency and describe with reasonable particularity the matters on which examination is requested. The organization named must designate one or more officers, directors, or managing agents, or other persons, who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena must advise a nonparty organization of its duty to make the designation. The persons designated shall testify to matters known or reasonably available to the organization. This subrule does not preclude taking a deposition by another procedure authorized in these rules.

(C) Conduct of Deposition; Examination and Cross-Examination; Manner of Recording; Objections; Conferring with Deponent.

(1) Examination of Deponent

(a) The person before whom the deposition is to be taken must put the witness on oath.

(b) Examination and cross-examination of the witness shall proceed as permitted at a trial under the Michigan Rules of Evidence.

(c) In lieu of participating in the oral examination, a party may send written questions to the person conducting the examination, who shall propound them to the witness and record the witness's answers.

(2) Recording of Deposition. The person before whom the deposition is taken shall personally, or by someone acting under his or her direction and in his or her presence, record the testimony of the witness.

(a) The testimony must be taken stenographically or recorded by other means in accordance with this subrule. The testimony need not be transcribed unless requested by one of the parties.

(b) While the testimony is being taken, a party, as a matter of right, may also make a record of it by nonsecret mechanical or electronic means, except that video recording is governed by MCR 2.315. Any use of the recording in court is within the discretion of the court. A person making such a record must furnish a duplicate of the record to another party at the request and expensed of the other party.

(3) Recording by Nonstenographic Means. The court may order, or the parties may stipulate, that the testimony at a deposition be recorded by other than stenographic means.

(a) The order or stipulation must designate the manner of recording and preserving the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A deposition in the form of a recording may be filed with the court as are other depositions.

(b) If a deposition is taken by other than stenographic means on order of the court, a party may nevertheless arrange to have a stenographic transcription made at that party's own expense.

(c) Before a deposition taken by other than stenographic means may be used in court it must be transcribed unless the court enters an order waiving transcription. The costs of transcription are borne by the parties as determined by the court.

(d) Subrule (C)(3) does not apply to video depositions, which are governed by MCR 2.315.

(4) Objections During Deposition.

(a) All objections made at the deposition, including objections to

(i) the qualifications of the person taking the deposition,

(ii) the manner of taking it,

(iii) the evidence presented, or

(iv) the conduct of a party,

must be noted on the record by the person before whom the deposition is taken.

Subject to limitation imposed by an order under MCR 2.302(C) or subrule (D) of this rule, evidence objected to on grounds other than privilege shall be taken subject to the objections.

(b) An objection during a deposition must be stated concisely in a civil and nonsuggestive manner.

(c) Objections are limited to

(i) objections that would be waived under MCR 2.308(C)(2) or (3), and

(ii) those necessary to preserve a privilege or other legal protection or to enforce a limitation ordered by the court.

(5) Conferring with Deponent.

(a) A person may instruct a deponent not to answer only when necessary to preserve a privilege or other legal protection, to enforce a limitation ordered by the court, or to present a motion under MCR 2.306(D)(1).

(b) A deponent may not confer with another person while a question is pending, except to decide whether to assert a privilege or other legal protection.

(D) Motion to Terminate or Limit Examination; Sanctions; Asserting Privilege.

(1) Motion. At any time during the taking of the deposition, on motion of a party or of the deponent and on a showing that the examination is being conducted in bad faith or in a manner unreasonably to annoy, embarrass, or oppress the deponent or party, or that the matter inquired about is privileged, a court in which the action is pending or the court in the county or district where the deposition is being taken may order the person conducting the examination to cease taking the depositon, or may limit the scope and manner of the taking of the deposition as provided in MCR 2.302(C). If the order entered terminates the examination, it may resume only on order of the court in which the action is pending.

(2) Sanctions. On motion, the court may impose an appropriate sanction- including the reasonable expenses and attorney fees incurred by any party- on a person who impedes, delays, or frustrates the fair examination of the deponent or otherwise violates this rule.

(3) Suspending Deposition. On demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to move for an order. MCR 2.313(A)(5) applies to the award of expenses incurred in relation to the motion.

(4) Raising Privilege before Deposition. If a party knows before the time scheduled for the taking of a deposition that he or she will assert that the matter to be inquired about is privileged, the party must move to prevent the

taking of the deposition before its occurrence or be subject to costs under subrule (G).

(5) Failure to Assert Privilege. A party who has a privilege regarding part or all of the testimony of a deponent must either assert the privilege at the depostion or lose the privilege as to that testimony for purposes of the action. A party who claims a privlege at a deposition may not at the trial offer the testimony of the deponent pertaining to the evidence objected to at the deposition. A party who asserts a privilege regarding medical information is subject to the provisions of MCR 2.314(B).

(E) Exhibits. Documents and things produced for inspection during the examination of the witness must, on the request of a party, be marked for identification and annexed to the deposition, if practicable, and may be inspected and copied by a party, except as follows:

(1) The person producing the materials may substitute copies to be marked for identification, if he or she affords to all parties fair opportunity to verify the copies by comparison with the originals.

(2) If the person producing the materials requests their return, the person conducting the examination or the stenographer must mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to the deposition. A party may move for an order that the original be annexed to and filed with the deposition, pending final disposition of the action.

(F) Certification and Transcription; Filing; Copies.

(1) If transcription is requested by a party, the person conducting the examination or the stenographer must certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness. A deposition transcribed and certified in accordance with subrule (F) need not be submitted to the witness for examination and signature.

(2) On payment of reasonable charges, the person conducting the examination shall furnish a copy of the deposition to a party or to the deponent. Where transcription is requested by a party other than the party requesting the deposition, the court may order, or the parties may stipulate, that the expense of transcription or a portion of it be paid by the party making the request.

(3) Except as provided in subrule (C)(3) or in MCR 2.315(E), a deposition may not be filed with the court unless it has first been transcribed. If a party requests that the transcript be filed, the person conducting the examination or the stenographer shall, after transcription and certification:

(a) securely seal the transcript in an envelope endorsed with the title and file number of the action and marked "Deposition of [*name of witness*]," and promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk of that court for filing;

(b) give prompt notice of its filing to all other parties, unless the parties agree otherwise by stipulation in writing or on the record.

(G) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed with the deposition and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to the other party the reasonable expenses incurred in attending, including reasonable attorney fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena on the witness, and the witness because of the failure does not attend, and if another party attends in person or by attorney because he or she expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to the other party the reasonable expenses incurred in attending, including reasonable attorney fees.

Rule 2.307 Depositions on Written Questions

(A) Serving Questions; Notice.

(1) Under the same circumstances as set out in MCR 2.306(A), a party may take the testimony of a person, including a party, by deposition on written questions. The attendance of the witnesses may be compelled by the use of a subpoena as provided in MCR 2.305. A deposition on written questions may be taken of a public or private corporation or partnership or association or governmental agency in accordance with the provisions of MCR 2.306(B)(5).

(2) A party desiring to take a deposition on written questions shall serve them on every other party with a notice stating

(a) the name and address of the person who is to answer them, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; and

(b) the name or descriptive title and address of the person before whom the deposition is to be taken.

(3) Within 14 days after the notice and written questions are served, a party may serve cross-questions on all other parties. Within 7 days after being served with cross-questions, a party may serve redirect questions on all other parties. Within 7 days after being served with redirect questions, a party may serve recross-questions on all other parties. The parties, by stipulation in writing, or the court, for cause shown, may extend or shorten the time requirements.

(B) Taking of Responses and Preparation of Record. A copy of the notice, any stipulation, and copies of all questions served must be delivered by the party who proposed the deposition to the person before whom the deposition will be taken as stated in the notice. The person before whom the deposition is to be taken must proceed promptly to take the testimony of the witness in response to the questions, and, if requested, to transcribe, certify, and file the deposition in the manner provided by MCR 2.306(C), (E), and (F), attaching the copy of the notice, the questions, and any stipulations of the parties.

Rule 2.308 Use of Depositions in Court Proceedings

(A) In General.

Depositions or parts thereof shall be admissible at trial or on the hearing of a motion or in an interlocutory proceeding only as provided in the Michigan Rules of Evidence.

(B) Objections to Admissibility. Subject to the provisions of subrule (C) and MCR 2.306(C)(4), objection may be made at the trial or hearing to receiving in evidence a deposition or part of a deposition for any reason that would require the exclusion of the evidence.

(C) Effect of Errors or Irregularities in Depositions.

(1) Notice. Errors or irregularities in the notice for taking a deposition are waived unless written objection is promptly served on the party giving notice.

(2) Disqualification of Person Before Whom Taken. Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) Taking of Deposition.

(a) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of a deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(b) Errors and irregularities occurring at the deposition in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any other kind which might be cured if promptly presented, are waived unless seasonable objection is made at the taking of the deposition.

(c) Objections to the form of written questions submitted under MCR 2.307 are waived unless served in writing on the party propounding them within the time allowed for serving the succeeding cross-questions or other questions and within 7 days after service of the last questions authorized.

(d) On motion and notice a party may request a ruling by the court on an objection in advance of the trial.

(4) Certification, Transcription, and Filing of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the person before whom it was taken are waived unless a motion objecting to the deposition is filed within a reasonable time.

(5) Harmless Error. None of the foregoing errors or irregularities, even when not waived, or any others, preclude or restrict the use of the deposition, except

insofar as the court finds that the errors substantially destroy the value of the deposition as evidence or render its use unfair or prejudicial.

Rule 2.309 Interrogatories to Parties

(A) Availability; Procedure for Service. A party may serve on another party written interrogatories to be answered by the party served or, if the party served is a public or private corporation, partnership, association, or governmental agency, by an officer or agent. Interrogatories may, without leave of court, be served:

(1) on the plaintiff after commencement of the action;

(2) on a defendant with or after the service of the summons and complaint on that defendant.

(B) Answers and Objections.

(1) Each interrogatory must be answered separately and fully in writing under oath. The answers must include such information as is available to the party served or that the party could obtain from his or her employees, agents, representatives, sureties, or indemnitors. If the answering party objects to an interrogatory, the reasons for the objection must be stated in lieu of an answer.

(2) The answering party shall repeat each interrogatory or subquestion immediately before the answer to it.

(3) The answers must be signed by the person making them and the objections signed by the attorney or an unrepresented party making them.

(4) The party on whom the interrogatories are served must serve the answers and objections, if any, on all other parties within 28 days after the interrogatories are served, except that a defendant may serve answers within 42 days after being served with the summons and complaint. The court may allow a longer or shorter time and, for good cause shown, may excuse service on parties other than the party who served the interrogatories.

(C) Motion to Compel Answers. The party submitting the interrogatories may move for an order under MCR 2.313(A) with respect to an objection to or other failure to answer an interrogatory. If the motion is based on the failure to serve answers, proof of service of the interrogatories must be filed with the motion. The motion must state that the movant has in good faith conferred or attempted to confer with the party not makeing the disclosure in an effort to secure the disclosure without court action.

(D) Scope; Use at Trial.

(1) An interrogatory may relate to matters that can be inquired into under MCR 2.302(B).

(2) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(3) The answer to an interrogatory may be used to the extent permitted by the rules of evidence.

(E) Option to Produce Business Records. Where the answer to an interrogatory may be derived from

(1) the business records of the party on whom the interrogatory has been served,

(2) an examination, audit, or inspection of business records, or

(3) a compilation, abstract, or summary based on such records,

and the burden of deriving the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to identify, as readily as can the party served, the records from which the answer may be derived.

Rule 2.310 Requests for Production of Documents and Other Things; Entry on Land for Inspection and Other Purposes

(A) Definitions. For the purpose of this rule,

(1) "Documents" includes writings, drawings, graphs, charts, photographs, phono records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form.

(2) "Entry on land" means entry upon designated land or other property in the possession or control of the person on whom the request is served for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or a designated object or operation on the property, within the scope of MCR 2.302(B).

(B) Scope.

(1) A party may serve on another party a request

(a) to produce and permit the requesting party, or someone acting for that party,

(i) to inspect and copy designated documents or

(ii) to inspect and copy, test, or sample other tangible things

that constitute or contain matters within the scope of MCR 2.302(B) and that are in the possession, custody, or control of the party on whom the request is served; or

(b) to permit entry on land.

(2) A party may serve on a nonparty a request

(a) to produce and permit the requesting party or someone acting for that party to inspect and test or sample tangible things that constitute or contain matters within the scope of MCR 2.302(B) and that are in the possession, custody, or control of the person on whom the request is served; or

(b) to permit entry on land.

(C) Request to Party.

(1) The request may, without leave of court, be served on the plaintiff after commencement of the action and on the defendant with or after the service of the summons and complaint on that defendant. The request must list the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. The request must specify a reasonable time, place, and manner of making the inspection and performing the related acts, as well as the form or forms in which electronically stored information is to be produced, subject to objection.

(2) The party on whom the request is served must serve a written response within 28 days after service of the request, except that a defendant may serve a response within 42 days after being served with the summons and complaint. The court may allow a longer or shorter time. With respect to each item or category, the response must state that inspection and related activities will be permitted as requested or that the request is objected to, in which event the reasons for objection must be stated. If objection is made to part of an item or category, the part must be specified. If the request does not specify the form or forms in which electronically stored information is to be produced, the party responding to the request must produce the information in a form or forms in which the party ordinarily maintains it, or in a form or forms that is or are reasonably usable. A party producing electronically stored information need only produce the same information in one form.

(3) The party submitting the request may move for an order under MCR 2.313(A) with respect to an objection to or a failure to respond to the request or a part of it, or failure to permit inspection as requested. If the motion is based on a failure to respond to a request, proof of service of the request must be filed with the motion. The motion must state that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(4) The party to whom the request is submitted may seek a protective order under MCR 2.302(C).

(5) A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(6) Unless otherwise ordered by the court for good cause, the party producing items for inspection shall bear the cost of assembling them and the party requesting the items shall bear any copying costs.

(D) Request to Nonparty.

(1) A request to a nonparty may be served at any time, except that leave of the court is required if the plaintiff seeks to serve a request before the occurrence of one of the events stated in MCR 2.306(A)(1).

(2) The request must be served on the person to whom it is directed in the manner provided in MCR 2.105, and a copy must be served on the other parties.

(3) The request must

(a) list the items to be inspected and tested or sampled, either by individual item or by category, and describe each item and category with reasonable particularity,

(b) specify a reasonable time, place, and manner of making the inspection and performing the related acts, and

(c) inform the person to whom it is directed that unless he or she agrees to allow the inspection or entry at a reasonable time and on reasonable conditions, a motion may be filed seeking a court order to require the inspection or entry.

(4) If the person to whom the request is directed does not permit the inspection or entry within 14 days after service of the request (or a shorter time if the court directs), the party seeking the inspection or entry may file a motion to compel the inspection or entry under MCR 2.313(A). The motion must include a copy of the request and proof of service of the request. The movant must serve the motion on the person from whom discovery is sought as provided in MCR 2.105.

(5) The court may order the party seeking discovery to pay the reasonable expenses incurred in complying with the request by the person from whom discovery is sought.

(6) This rule does not preclude an independent action against a nonparty for production of documents and other things and permission to enter on land or a subpoena to a nonparty under MCR 2.305.

Rule 2.311 Physical and Mental Examination of Persons

(A) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental or blood examination by a physician (or other appropriate professional) or to produce for examination the person in the party's custody or legal control. The order may be entered only on motion for good cause with notice to the person to be examined and to all parties. The order must specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made, and may provide that the attorney for the person to be examined may be present at the examination.

(B) Report of Examining Physician.

(1) If requested by the party against whom an order is entered under subrule (A) or by the person examined, the party causing the examination to be made must deliver to the requesting person a copy of a detailed written report of the examining physician setting out the findings, including results of all tests made, diagnosis, and conclusions, together with like reports on all earlier examinations of the same condition, and must make available for inspection and examination x-rays, cardiograms, and other diagnostic aids.

(2) After delivery of the report, the party causing the examination to be made is entitled on request to receive from the party against whom the order is made a similar report of any examination previously or thereafter made of the same condition, and to a similar inspection of all diagnostic aids unless, in the case of a report on the examination of a nonparty, the party shows that he or she is unable to obtain it.

(3) If either party or a person examined refuses to deliver a report, the court on motion and notice may enter an order requiring delivery on terms as are just, and if a physician refuses or fails to comply with this rule, the court may order the physician to appear for a discovery deposition.

(4) By requesting and obtaining a report on the examination ordered under this rule, or by taking the deposition of the examiner, the person examined waives any privilege he or she may have in that action, or another action involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the person as to the same mental or physical condition.

(5) Subrule (B) applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise.

(6) Subrule (B) does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician under any other rule.

Rule 2.312 Request for Admission

(A) Availability; Scope. Within the time for completion of discovery, a party may serve on another party a written request for the admission of the truth of a matter within the scope of MCR 2.302(B) stated in the request that relates to statements or opinions of fact or the application of law to fact, including the genuineness of documents described in the request. Copies of the documents must be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested must be stated separately.

(B) Answer; Objection.

(1) Each matter as to which a request is made is deemed admitted unless, within 28 days after service of the request, or within a shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter. Unless the court orders a shorter time a defendant may serve an

answer or objection within 42 days after being served with the summons and complaint.

(2) The answer must specifically deny the matter or state in detail the reasons why the answering party cannot truthfully admit or deny it. A denial must fairly meet the substance of the request, and when good faith requires that a party qualify an answer or deny only part of the matter of which an admission is requested, the party must specify the parts that are admitted and denied.

(3) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that he or she has made reasonable inquiry and that the information known or readily obtainable is insufficient to enable the party to admit or deny.

(4) If an objection is made, the reasons must be stated. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request. The party may, subject to the provisions of MCR 2.313(C), deny the matter or state reasons why he or she cannot admit or deny it.

(C) Motion Regarding Answer or Objection. The party who has requested the admission may move to determine the sufficiency of the answer or objection. The motion must state that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of the rule, it may order either that the matter is admitted, or that an amended answer be served. The court may, in lieu of one of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time before trial. The provisions of MCR 2.313(A)(5) apply to the award of expenses incurred in relation to the motion.

(D) Effect of Admission.

(1) A matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of an admission. For good cause the court may allow a party to amend or withdraw an admission. The court may condition amendment or withdrawal of the admission on terms that are just.

(2) An admission made by a party under this rule is for the purpose of the pending action only and is not an admission for another purpose, nor may it be used against the party in another proceeding.

(E) Public Records.

(1) A party intending to use as evidence

(a) a record that a public official is required by federal, state, or municipal authority to receive for filing or recording or is given custody of by law, or

(b) a memorial of a public official,

may prepare a copy, synopsis, or abstract of the record, insofar as it is to be used, and serve it on the adverse party sufficiently in advance of trial to allow the adverse party a reasonable opportunity to determine its accuracy.

(2) The copy, synopsis, or abstract is then admissible in evidence as admitted facts in the action, if otherwise admissible, except insofar as its inaccuracy is pointed out by the adverse party in an affidavit filed and served within a reasonable time before trial.

(F) Filing With Court. Requests and responses under this rule must be filed with the court either before service or within a reasonable time thereafter.

Rule 2.313 Failure to Provide or to Permit Discovery; Sanctions

(A) Motion for Order Compelling Discovery. A party, on reasonable notice to other parties and all persons affected, may apply for an order compelling discovery as follows:

(1) Appropriate Court. A motion for an order under this rule may be made to the court in which the action is pending, or, as to a matter relating to a deposition, to a court in the county or district where the deposition is being taken.

(2) Motion. If

(a) a deponent fails to answer a question propounded or submitted under MCR 2.306 or 2.307,

(b) a corporation or other entity fails to make a designation under MCR 2.306(B)(5) or 2.307(A)(1),

(c) a party fails to answer an interrogatory submitted under MCR 2.309, or

(d) in response to a request for inspection submitted under MCR 2.310, a person fails to respond that inspection will be permitted as requested, the party seeking discovery may move for an order compelling an answer, a designation, or inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) Ruling; Protective Order. If the court denies the motion in whole or in part, it may enter a protective order that it could have entered on motion made under MCR 2.302(C).

(4) Evasive or Incomplete Answer. For purposes of this subrule an evasive or incomplete answer is to be treated as a failure to answer.

(5) Award of Expenses of Motion.

(a) If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct, or both, to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was

substantially justified or that other circumstances make an award of expenses unjust.

(b) If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion, or both, to pay to the person who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(c) If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and other persons in a just manner.

(B) Failure to Comply With Order.

(1) Sanctions by Court Where Deposition Is Taken. If a deponent fails to be sworn or to answer a question after being directed to do so by a court in the county or district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by Court in Which Action Is Pending. If a party or an officer, director, or managing agent of a party, or a person designated under MCR 2.306(B)(5) or 2.307(A)(1) to testify on behalf of a party, fails to obey an order to provide or permit discovery, including an order entered under subrule (A) of this rule or under MCR 2.311, the court in which the action is pending may order such sanctions as are just, including, but not limited to the following:

(a) an order that the matters regarding which the order was entered or other designated facts may be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters into evidence;

(c) an order striking pleadings or parts of pleadings, staying further proceedings until the order is obeyed, dismissing the action or proceeding or a part of it, or rendering a judgment by default against the disobedient party;

(d) in lieu of or in addition to the foregoing orders, an order treating as a contempt of court the failure to obey an order, except an order to submit to a physical or mental examination;

(e) where a party has failed to comply with an order under MCR 2.311(A) requiring the party to produce another for examination, such orders as are listed in subrules (B)(2)(a), (b), and (c), unless the party failing to comply shows that he or she is unable to produce such person for examination.

In lieu of or in addition to the foregoing orders, the court shall require the party failing to obey the order or the attorney advising the party, or both, to pay the reasonable expenses, including attorney fees, caused by the failure, unless the

court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(C) Expenses on Failure to Admit. If a party denies the genuineness of a document, or the truth of a matter as requested under MCR 2.312, and if the party requesting the admission later proves the genuineness of the document or the truth of the matter, the requesting party may move for an order requiring the other party to pay the expenses incurred in making that proof, including attorney fees. The court shall enter the order unless it finds that

(1) the request was held objectionable pursuant to MCR 2.312,

(2) the admission sought was of no substantial importance,

(3) the party failing to admit had reasonable ground to believe that he or she might prevail on the matter, or

(4) there was other good reason for the failure to admit.

(D) Failure of Party to Attend at Own Deposition, to Serve Answers to Interrogatories, or to Respond to Request for Inspection.

(1) If a party; an officer, director, or managing agent of a party; or a person designated under MCR 2.306(B)(5) or 2.307(A)(1) to testify on behalf of a party fails

(a) to appear before the person who is to take his or her deposition, after being served with a proper notice;

(b) to serve answers or objections to interrogatories submitted under MCR 2.309, after proper service of the interrogatories; or

(c) to serve a written response to a request for inspection submitted under MCR 2.310, after proper service of the request, on motion, the court in which the action is pending may order such sanctions as are just. Among others, it may take an action authorized under subrule (B)(2)(a), (b), and (c).

(2) In lieu of or in addition to an order, the court shall require the party failing to act or the attorney advising the party, or both, to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(3) A failure to act described in this subrule may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has moved for a protective order as provided by MCR 2.302(C).

(E) Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

Rule 2.314 Discovery of Medical Information Concerning Party

(A) Scope of Rule.

(1) When a mental or physical condition of a party is in controversy, medical information about the condition is subject to discovery under these rules to the extent that

(a) the information is otherwise discoverable under MCR 2.302(B), and

(b) the party does not assert that the information is subject to a valid privilege.

(2) Medical information subject to discovery includes, but is not limited to, medical records in the possession or control of a physician, hospital, or other custodian, and medical knowledge discoverable by deposition or interrogatories.

(3) For purposes of this rule, medical information about a mental or physical condition of a party is within the control of the party, even if the information is not in the party's immediate physical possession.

(B) Privilege; Assertion; Waiver; Effects.

(1) A party who has a valid privilege may assert the privilege and prevent discovery of medical information relating to his or her mental or physical condition. The privilege must be asserted in the party's written response to a request for production of documents under MCR 2.310, in answers to interrogatories under MCR 2.309(B), before or during the taking of a deposition, or by moving for a protective order under MCR 2.302(C). A privilege not timely asserted is waived in that action, but is not waived for the purposes of any other action.

(2) Unless the court orders otherwise, if a party asserts that the medical information is subject to a privilege and the assertion has the effect of preventing discovery of medical information otherwise discoverable under MCR 2.302(B), the party may not thereafter present or introduce any physical, documentary, or testimonial evidence relating to the party's medical history or mental or physical condition.

(C) Response by Party to Request for Medical Information.

(1) A party who is served with a request for production of medical information under MCR 2.310 must either:

(a) make the information available for inspection and copying as requested;

(b) assert that the information is privileged;

(c) object to the request as permitted by MCR 2.310(C)(2); or

(d) furnish the requesting party with signed authorizations in the form approved by the state court administrator sufficient in number to enable the requesting party to obtain the information requested from persons, institutions, hospitals, and other custodians in actual possession of the information requested.

(2) A party responding to a request for medical information as permitted by subrule (C)(1)(d) must also inform the adverse party of the physical location of the information requested.

(D) Release of Medical Information by Custodian.

(1) A physician, hospital, or other custodian of medical information (referred to in this rule as the "custodian") shall comply with a properly authorized request for the medical information within 28 days after the receipt of the request, or, if at the time the request is made the patient is hospitalized for the mental or physical condition for which the medical information is sought, within 28 days after the patient's discharge or release. The court may extend or shorten these time limits for good cause.

(2) In responding to a request for medical information under this rule, the custodian will be deemed to have complied with the request if the custodian

(a) makes the information reasonably available for inspection and copying; or

(b) delivers to the requesting party the original information or a true and exact copy of the original information accompanied by a sworn certificate in the form approved by the state court administrator, signed by the custodian verifying that the copy is a true and complete reproduction of the original information.

(3) If it is essential that an original document be examined when the authenticity of the document, questions of interpretation of handwriting, or similar questions arise, the custodian must permit reasonable inspection of the original document by the requesting party and by experts retained to examine the information.

(4) If x-rays or other records incapable of reproduction are requested, the custodian may inform the requesting party that these records exist, but have not been delivered pursuant to subrule (D)(2). Delivery of the records may be conditioned on the requesting party or the party's agent signing a receipt that includes a promise that the records will be returned to the custodian after a reasonable time for inspection purposes has elapsed.

(5) In complying with subrule (D)(2), the custodian is entitled to receive reasonable reimbursement in advance for expenses of compliance.

(6) If a custodian does not respond within the time permitted by subrule (D)(1) to a party's authorized request for medical information, a subpoena may be issued under MCR 2.305(A)(2), directing that the custodian present the information for examination and copying at the time and place stated in the subpoena.

(E) Persons Not Parties. Medical information concerning persons not parties to the action is not discoverable under this rule.

Rule 2.315 Video Depositions

(A) When Permitted. Depositions authorized under MCR 2.303 and 2.306 may be taken by means of simultaneous audio and visual electronic recording without leave of the court or stipulation of the parties, provided the deposition is taken in accordance with this rule.

(B) Rules Governing. Except as provided in this rule, the taking of video depositions is governed by the rules governing the taking of other depositions unless the nature of the video deposition makes compliance impossible or unnecessary.

(C) Procedure.

(1) A notice of the taking of a video deposition and a subpoena for attendance at the deposition must state that the deposition is to be visually recorded.

(2) A video deposition must be timed by means of a digital clock or clocks capable of displaying the hours, minutes, and seconds. The clock or clocks must be in the picture at all times during the taking of the deposition.

(3) A video deposition must begin with a statement on camera of the date, time, and place at which the recording is being made, the title of the action, and the identification of the attorneys.

(4) The person being deposed must be sworn as a witness on camera by an authorized person.

(5) More than one camera may be used, in sequence or simultaneously.

(6) The parties may make audio recordings while the video deposition is being taken.

(7) At the conclusion of the deposition a statement must be made on camera that the deposition is completed.

(D) Custody of Tape and Copies.

(1) The person making the video recording must retain possession of it. The video recording must be securely sealed and marked for identification purposes.

(2) The parties may purchase audio or audio-visual copies of the recording from the operator.

(E) Filing; Notice of Filing. If a party requests that the deposition be filed, the person who made the recording shall

(1) file the recording with the court under MCR 2.306(F)(3), together with an affidavit identifying the recording, stating the total elapsed time, and attesting that no alterations, additions, or deletions other than those ordered by the court have been made;

(2) give the notice required by MCR 2.306(F)(3), and

(3) serve copies of the recording on all parties who have requested them under MCR 2.315(D)(2).

(F) Use as Evidence; Objections.

(1) A video deposition may not be used in a court proceeding unless it has been filed with the court.

(2) Except as modified by this rule, the use of video depositions in court proceedings is governed by MCR 2.308.

(3) A party who seeks to use a video deposition at trial must provide the court with either

(a) a transcript of the deposition, which shall be used for ruling on any objections, or

(b) a stipulation by all parties that there are no objections to the deposition and that the recording (or an agreed portion of it) may be played.

(4) When a video deposition is used in a court proceeding, the court must indicate on the record what portions of the recording have been played. The court reporter or recorder need not make a record of the statements in the recording.

(G) Custody of Video Deposition After Filing. After filing, a video deposition shall remain in the custody of the court unless the court orders the recording stored elsewhere for technical reasons or because of special storage problems. The order directing the storage must direct the custodian to keep the recordings sealed until the further order of the court. Video depositions filed with the court shall have the same status as other depositions and documents filed with the court, and may be reproduced, preserved, destroyed, or salvaged as directed by order of the court.

(H) Appeal. On appeal the recording remains part of the record and shall be transmitted with it. A party may request that the appellate court view portions of the video deposition. If a transcript was not provided to the court under subrule (F)(3), the appellant must arrange and pay for the preparation of a transcript to be included in the record on appeal.

(I) Costs. The costs of taking a video deposition and the cost for its use in evidence may be taxed as costs as provided by MCR 2.625 in the same manner as depositions recorded in other ways.

Rule 2.316 Removal of Discovery Materials From File

(A) Definition. For the purpose of this rule, "discovery material" means deposition transcripts, audio or video recordings of depositions, interrogatories, and answers to interrogatories and requests to admit.

(B) Removal from File. In civil actions, discovery materials may be removed from files and destroyed in the manner provided in this rule.

(1) By Stipulation. If the parties stipulate to the removal of discovery materials from the file, the clerk may remove the materials and dispose of them in the manner provided in the stipulation.

(2) By the Clerk.

(a) The clerk may initiate the removal of discovery materials from the file in the following circumstances.

(i) If an appeal has not been taken, 18 months after entry of judgment on the merits or dismissal of the action.

(ii) If an appeal has been taken, 91 days after the appellate proceedings are concluded, unless the action is remanded for further proceedings in the trial court.

(b) The clerk shall notify the parties and counsel of record, when possible, that discovery materials will be removed from the file of the action and destroyed on a specified date at least 28 days after the notice is served unless within that time

(i) the party who filed the discovery materials retrieves them from the clerk's office, or

(ii) a party files a written objection to removal of discovery materials from the file.

If an objection to removal of discovery materials is filed, the discovery materials may not be removed unless the court so orders after notice and opportunity for the objecting party to be heard. The clerk shall schedule a hearing and give notice to the parties. The rules governing motion practice apply.

(3) By Order. On motion of a party, or on its own initiative after notice and hearing, the court may order discovery materials removed at any other time on a finding that the materials are no longer necessary. However, no discovery materials may be destroyed by court personnel or the clerk until the periods set forth in subrule (2)(a)(i) or (2)(a)(ii) have passed.

Subchapter 2.400 Pretrial Procedure; Alternative Dispute Resolution; Offers of Judgment; Settlements

Rule 2.401 Pretrial Procedures; Conferences; Scheduling Orders

(A) Time; Discretion of Court. At any time after the commencement of the action, on its own initiative or the request of a party, the court may direct that the attorneys for the parties, alone or with the parties, appear for a conference. The court shall give reasonable notice of the scheduling of a conference. More than one conference may be held in an action.

(B) Early Scheduling Conference and Order.

(1) Early Scheduling Conference. The court may direct that an early scheduling conference be held. In addition to those considerations enumerated in subrule (C)(1), during this conference the court should consider:

(a) whether jurisdiction and venue are proper or whether the case is frivolous,

(b) whether to refer the case to an alternative dispute resolution procedure under MCR 2.410,

(c) the complexity of a particular case and enter a scheduling order setting time limitations for the processing of the case and establishing dates when future actions should begin or be completed in the case, and

(d) discovery, preservation, and claims of privilege of electronically stored information.

(2) Scheduling Order.

(a) At an early scheduling conference under subrule (B)(1), a pretrial conference under subrule (C), or at such other time as the court concludes that such an order would facilitate the progress of the case, the court shall establish times for events the court deems appropriate, including

(i) the initiation or completion of an ADR process,

(ii) the amendment of pleadings, adding of parties, or filing of motions,

(iii) the completion of discovery,

(iv) the exchange of witness lists under subrule (I), and

(v) the scheduling of a pretrial conference, a settlement conference, or trial.

More than one such order may be entered in a case.

(b) The scheduling of events under this subrule shall take into consideration the nature and complexity of the case, including the issues involved, the number and location of parties and potential witnesses, including experts, the extent of expected and necessary discovery, and the availability of reasonably certain trial dates.

(c) The scheduling order also may include provisions concerning discovery of electronically stored information, any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after production, preserving discoverable information, and the form in which electronically stored information shall be produced.

(d) Whenever reasonably practical, the scheduling of events under this subrule shall be made after meaningful consultation with all counsel of record.

(i) If a scheduling order is entered under this subrule in a manner that does not permit meaningful advance consultation with counsel, within 14 days after entry of the order, a party may file and serve a written request for amendment of the order detailing the reasons why the order should be amended.

(ii) Upon receiving such a written request, the court shall reconsider the order in light of the objections raised by the parties. Whether the reconsideration occurs at a conference or in some other manner, the court must either enter a new scheduling order or notify the parties in writing that the court declines to amend the order. The court must schedule a conference, enter the new order, or send the written notice, within 14 days after receiving the request.

(iii) The submission of a request pursuant to this subrule, or the failure to submit such a request, does not preclude a party from filing a motion to modify a scheduling order.

(C) Pretrial Conference; Scope.

(1) At a conference under this subrule, in addition to the matters listed in subrule (B)(1), the court and the attorneys for the parties may consider any matters that will facilitate the fair and expeditious disposition of the action, including:

(a) the simplification of the issues;

(b) the amount of time necessary for discovery;

(c) the necessity or desirability of amendments to the pleadings;

(d) the possibility of obtaining admissions of fact and of documents to avoid unnecessary proof;

(e) the limitation of the number of expert witnesses;

(f) the consolidation of actions for trial, the separation of issues, and the order of trial when some issues are to be tried by a jury and some by the court;

(g) the possibility of settlement;

(h) whether mediation, case evaluation, or some other form of alternative dispute resolution would be appropriate for the case, and what mechanisms are available to provide such services;

(i) the identity of the witnesses to testify at trial;

(j) the estimated length of trial;

(k) whether all claims arising out of the transaction or occurrence that is the subject matter of the action have been joined as required by MCR 2.203(A);

(l) other matters that may aid in the disposition of the action.

(2) Conference Order. If appropriate, the court shall enter an order incorporating agreements reached and decisions made at the conference.

(D) Order for Trial Briefs. The court may direct the attorneys to furnish trial briefs as to any or all of the issues involved in the action.

(E) Appearance of Counsel. The attorneys attending the conference shall be thoroughly familiar with the case and have the authority necessary to fully participate in the conference. The court may direct that the attorneys who intend to try the case attend the conference.

(F) Presence of Parties at Conference. If the court anticipates meaningful discussion of settlement, the court may direct that the parties to the action, agents of parties, representatives of lienholders, or representatives of insurance carriers, or other persons:

(1) be present at the conference or be immediately available at the time of the conference; and

(2) have information and authority adequate for responsible and effective participation in the conference for all purposes, including settlement.

The court's order may require the availability of a specified individual; provided, however, that the availability of a substitute who has the information and authority required by subrule (F)(2) shall constitute compliance with the order.

The court's order may specify whether the availability is to be in person or by telephone.

This subrule does not apply to an early scheduling conference held pursuant to subrule (B).

(G) Failure to Attend or to Participate.

(1) Failure of a party or the party's attorney or other representative to attend a scheduled conference or to have information and authority adequate for responsible and effective participation in the conference for all purposes, including settlement, as directed by the court, may constitute a default to which MCR 2.603 is applicable or a ground for dismissal under MCR 2.504(B).

(2) The court shall excuse a failure to attend a conference or to participate as directed by the court, and shall enter a just order other than one of default or dismissal, if the court finds that

(a) entry of an order of default or dismissal would cause manifest injustice; or

(b) the failure was not due to the culpable negligence of the party or the party's attorney.

The court may condition the order on the payment by the offending party or attorney of reasonable expenses as provided in MCR 2.313(B)(2).

(H) Conference After Discovery. If the court finds at a pretrial conference held after the completion of discovery that due to a lack of reasonable diligence by a party the action is not ready for trial, the court may enter an appropriate order to facilitate preparation of the action for trial and may require the offending party to pay the reasonable expenses, including attorney fees, caused by the lack of diligence.

(I) Witness Lists.

(1) No later than the time directed by the court under subrule (B)(2)(a), the parties shall file and serve witness lists. The witness list must include:

(a) the name of each witness, and the witness' address, if known; however, records custodians whose testimony would be limited to providing the foundation for the admission of records may be identified generally;

(b) whether the witness is an expert, and the field of expertise.

(2) The court may order that any witness not listed in accordance with this rule will be prohibited from testifying at trial except upon good cause shown.

(3) This subrule does not prevent a party from obtaining an earlier disclosure of witness information by other discovery means as provided in these rules.

Rule 2.402 Use of Communication Equipment

(A) Definition. "Communication equipment" means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other.

(B) Use. A court may, on its own initiative or on the written request of a party, direct that communication equipment be used for a motion hearing, pretrial conference, scheduling conference, or status conference. The court must give notice to the parties before directing on its own initiative that communication equipment be used. A party wanting to use communication equipment must submit a written request to the court at least 7 days before the day on which such equipment is sought to be used, and serve a copy on the other parties, unless good cause is shown to waive this requirement. The requesting party also must provide a copy of the request to the office of the judge to whom the request is directed. The court may, with the consent of all parties or for good cause, direct that the testimony of a witness be taken through communication equipment. A verbatim record of the proceeding must still be made.

(C) Burden of Expense. The party who initiates the use of communication equipment shall pay the cost for its use, unless the court otherwise directs. If the use of communication equipment is initiated by the court, the cost for its use is to be shared equally, unless the court otherwise directs.

Rule 2.403 Case Evaluation

(A) Scope and Applicability of Rule.

(1) A court may submit to case evaluation any civil action in which the relief sought is primarily money damages or division of property.

(2) Case evaluation of tort cases filed in circuit court is mandatory beginning with actions filed after the effective dates of Chapters 49 and 49A of the Revised Judicature Act, as added by 1986 PA 178; however, the court may except an action from case evaluation on motion for good cause shown if it finds that case evaluation of that action would be inappropriate.

(3) Cases filed in district court may be submitted to case evaluation under this rule. The time periods set forth in subrules (B)(1), (G)(1), (L)(1) and (L)(2) may be shortened at the discretion of the district judge to whom the case is assigned.

(B) Selection of Cases.

(1) The judge to whom an action is assigned or the chief judge may select it for case evaluation by written order no earlier than 91 days after the filing of the answer

(a) on written stipulation by the parties,

(b) on written motion by a party, or

(c) on the judge's own initiative.

(2) Selection of an action for case evaluation has no effect on the normal progress of the action toward trial.

(C) Objections to Case Evaluation.

(1) To object to case evaluation, a party must file a written motion to remove from case evaluation and a notice of hearing of the motion and serve a copy on the attorneys of record and the ADR clerk within 14 days after notice of the order assigning the action to case evaluation. The motion must be set for hearing within 14 days after it is filed, unless the court orders otherwise.

(2) A timely motion must be heard before the case is submitted to case evaluation.

(D) Case Evaluation Panel.

(1) Case evaluation panels shall be composed of 3 persons.

(2) The procedure for selecting case evaluation panels is as provided in MCR 2.404.

(3) A judge may be selected as a member of a case evaluation panel, but may not preside at the trial of any action in which he or she served as a case evaluator.

(4) A case evaluator may not be called as a witness at trial.

(E) Disqualification of Case Evaluators. The rule for disqualification of a case evaluator is the same as that provided in MCR 2.003 for the disqualification of a judge.

(F) ADR Clerk. The court shall designate the ADR clerk specified under MCR 2.410, or some other person, to administer the case evaluation program. In this rule and MCR 2.404, "ADR clerk" refers to the person so designated.

(G) Scheduling Case Evaluation Hearing.

(1) The ADR clerk shall set a time and place for the hearing and send notice to the case evaluators and the attorneys at least 42 days before the date set.

(2) Adjournments may be granted only for good cause, in accordance with MCR 2.503.

(H) Fees.

(1) Within 14 days after the mailing of the notice of the case evaluation hearing, unless otherwise ordered by the court, each party must send to the ADR clerk a check for $75 made payable in the manner specified in the notice of the case evaluation hearing. However, if a judge is a member of the panel, the fee is $50. The ADR clerk shall arrange payment to the case evaluators. Except by stipulation and court order, the parties may not make any other payment of fees or expenses to the case evaluators than that provided in this subrule.

(2) Only a single fee is required of each party, even where there are counterclaims, cross-claims, or third-party claims.

(3) If one claim is derivative of another (e.g., husband-wife, parent-child) they must be treated as a single claim, with one fee to be paid and a single award made by the case evaluators.

(4) In the case of multiple injuries to members of a single family, the plaintiffs may elect to treat the action as involving one claim, with the payment of one fee and the rendering of one lump sum award to be accepted or rejected. If no such election is made, a separate fee must be paid for each plaintiff, and the case evaluation panel will then make separate awards for each claim, which may be individually accepted or rejected.

(5) Fees paid pursuant to subrule (H) shall be refunded to the parties if

(a) the court sets aside the order submitting the case to case evaluation or on its own initiative adjourns the case evaluation hearing, or

(b) the parties notify the ADR clerk in writing at least 14 days before the case evaluation hearing of the settlement, dismissal, or entry of judgment disposing of the action, or of an order of adjournment on stipulation or the motion of a party.

In the case of an adjournment, the fees shall not be refunded if the adjournment order sets a new date for case evaluation. If case evaluation is rescheduled at a later time, the fee provisions of subrule (H) apply regardless of whether previously paid fees have been refunded. Penalties for late filing of papers under subrule (I)(2) are not to be refunded.

(I) Submission of Documents.

(1) At least 14 days before the hearing, each party shall file with the ADR clerk 3 copies of documents pertaining to the issues to be mediated and 3 copies of a concise summary setting forth that party's factual and legal position on issues presented by the action, and shall serve one copy of the documents and summary on each attorney of record. A copy of a proof of service must be attached to the copies filed with the ADR clerk.

(2) Failure to file the required materials with the ADR clerk or to serve copies on each attorney of record by the required date subjects the offending attorney or party to a $150 penalty to be paid in the manner specified in the notice of the case evaluation hearing. An offending attorney shall not charge the penalty to the client, unless the client agreed in writing to be responsible for the penalty.

(J) Conduct of Hearing.

(1) A party has the right, but is not required, to attend a case evaluation hearing. If scars, disfigurement, or other unusual conditions exist, they may be demonstrated to the panel by a personal appearance; however, no testimony will be taken or permitted of any party.

(2) The rules of evidence do not apply before the case evaluation panel. Factual information having a bearing on damages or liability must be supported by documentary evidence, if possible.

(3) Oral presentation shall be limited to 15 minutes per side unless multiple parties or unusual circumstances warrant additional time. Information on applicable insurance policy limits and settlement negotiations shall be disclosed at the request of the case evaluation panel.

(4) Statements by the attorneys and the briefs or summaries are not admissible in any court or evidentiary proceeding.

(5) Counsel or the parties may not engage in ex parte communications with the case evaluators concerning the action prior to the hearing. After the evaluation, the case evaluators need not respond to inquiries by the parties or counsel regarding the proceeding or the evaluation.

(K) Decision.

(1) Within 14 days after the hearing, the panel will make an evaluation and notify the attorney for each party of its evaluation in writing. If an award is not unanimous, the evaluation must so indicate.

(2) The evaluation must include a separate award as to the plaintiff's claim against each defendant and as to each cross-claim, counterclaim, or third-party claim that has been filed in the action. For the purpose of this subrule, all such claims filed by any one party against any other party shall be treated as a single claim.

(3) The evaluation may not include a separate award on any claim for equitable relief, but the panel may consider such claims in determining the amount of an award.

(4) In a tort case to which MCL 600.4915(2) or MCL 600.4963(2) applies, if the panel unanimously finds that a party's action or defense as to any other party is frivolous, the panel shall so indicate on the evaluation. For the purpose of this rule, an action or defense is "frivolous" if, as to all of a plaintiff's claims or all of a defendant's defenses to liability, at least 1 of the following conditions is met:

(a) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the opposing party.

(b) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(c) The party's legal position was devoid of arguable legal merit.

(5) In an action alleging medical malpractice to which MCL 600.4915 applies, the evaluation must include a specific finding that

(a) there has been a breach of the applicable standard of care,

(b) there has not been a breach of the applicable standard of care, or

(c) reasonable minds could differ as to whether there has been a breach of the applicable standard of care.

(L) Acceptance or Rejection of Evaluation.

(1) Each party shall file a written acceptance or rejection of the panel's evaluation with the ADR clerk within 28 days after service of the panel's evaluation. Even if there are separate awards on multiple claims, the party must either accept or reject the evaluation in its entirety as to a particular opposing party. The failure to file a written acceptance or rejection within 28 days constitutes rejection.

(2) There may be no disclosure of a party's acceptance or rejection of the panel's evaluation until the expiration of the 28-day period, at which time the ADR clerk shall send a notice indicating each party's acceptance or rejection of the panel's evaluation.

(3) In case evaluations involving multiple parties the following rules apply:

(a) Each party has the option of accepting all of the awards covering the claims by or against that party or of accepting some and rejecting others. However, as to any particular opposing party, the party must either accept or reject the evaluation in its entirety.

(b) A party who accepts all of the awards may specifically indicate that he or she intends the acceptance to be effective only if

(i) all opposing parties accept, and/or

(ii) the opposing parties accept as to specified coparties.

If such a limitation is not included in the acceptance, an accepting party is deemed to have agreed to entry of judgment, or dismissal as provided in subrule (M)(1), as to that party and those of the opposing parties who accept, with the action to continue between the accepting party and those opposing parties who reject.

(c) If a party makes a limited acceptance under subrule (L)(3)(b) and some of the opposing parties accept and others reject, for the purposes of the cost provisions of subrule (O) the party who made the limited acceptance is deemed to have rejected as to those opposing parties who accept.

(M) Effect of Acceptance of Evaluation.

(1) If all the parties accept the panel's evaluation, judgment will be entered in accordance with the evaluation, unless the amount of the award is paid within 28 days after notification of the acceptances, in which case the court shall dismiss the action with prejudice. The judgment or dismissal shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest to the date it is entered.

(2) In a case involving multiple parties, judgment, or dismissal as provided in subrule (1), shall be entered as to those opposing parties who have accepted the portions of the evaluation that apply to them.

(N) Proceedings After Rejection.

(1) If all or part of the evaluation of the case evaluation panel is rejected, the action proceeds to trial in the normal fashion.

(2) If a party's claim or defense was found to be frivolous under subrule (K)(4), that party may request that the court review the panel's finding by filing a motion within 14 days after the ADR clerk sends notice of the rejection of the case evaluation award.

(a) The motion shall be submitted to the court on the case evaluation summaries and documents that were considered by the case evaluation panel. No other exhibits or testimony may be submitted. However, oral argument on the motion shall be permitted.

(b) After reviewing the materials submitted, the court shall determine whether the action or defense is frivolous.

(c) If the court agrees with the panel's determination, the provisions of subrule (N)(3) apply, except that the bond must be filed within 28 days after the entry of the court's order determining the action or defense to be frivolous.

(d) The judge who hears a motion under this subrule may not preside at a nonjury trial of the action.

(3) Except as provided in subrule (2), if a party's claim or defense was found to be frivolous under subrule (K)(4), that party shall post a cash or surety bond, pursuant to MCR 3.604, in the amount of $5,000 for each party against whom the action or defense was determined to be frivolous.

(a) The bond must be posted within 56 days after the case evaluation hearing or at least 14 days before trial, whichever is earlier.

(b) If a surety bond is filed, an insurance company that insures the defendant against a claim made in the action may not act as the surety.

(c) If the bond is not posted as required by this rule, the court shall dismiss a claim found to have been frivolous, and enter the default of a defendant whose defense was found to be frivolous. The action shall proceed to trial as to the remaining claims and parties, and as to the amount of damages against a defendant in default.

(d) If judgment is entered against the party who posted the bond, the bond shall be used to pay any costs awarded against that party by the court under any applicable law or court rule. MCR 3.604 applies to proceedings to enforce the bond.

(4) The ADR clerk shall place a copy of the case evaluation and the parties' acceptances and rejections in a sealed envelope for filing with the clerk of the court. In a nonjury action, the envelope may not be opened and the parties may not reveal the amount of the evaluation until the judge has rendered judgment.

(O) Rejecting Party's Liability for Costs.

(1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the case evaluation.

(2) For the purpose of this rule "verdict" includes,

(a) a jury verdict,

(b) a judgment by the court after a nonjury trial,

(c) a judgment entered as a result of a ruling on a motion after rejection of the case evaluation.

(3) For the purpose of subrule (O)(1), a verdict must be adjusted by adding to it assessable costs and interest on the amount of the verdict from the filing of the complaint to the date of the case evaluation, and, if applicable, by making the adjustment of future damages as provided by MCL 600.6306. After this adjustment, the verdict is considered more favorable to a defendant if it is more than 10 percent below the evaluation, and is considered more favorable to the plaintiff if it is more than 10 percent above the evaluation. If the evaluation was zero, a verdict finding that a defendant is not liable to the plaintiff shall be deemed more favorable to the defendant.

(4) In cases involving multiple parties, the following rules apply:

(a) Except as provided in subrule (O)(4)(b), in determining whether the verdict is more favorable to a party than the case evaluation, the court shall consider only the amount of the evaluation and verdict as to the particular pair of parties, rather than the aggregate evaluation or verdict as to all parties. However, costs may not be imposed on a plaintiff who obtains an aggregate verdict more favorable to the plaintiff than the aggregate evaluation.

(b) If the verdict against more than one defendant is based on their joint and several liability, the plaintiff may not recover costs unless the verdict is more favorable to the plaintiff than the total case evaluation as to those defendants, and a defendant may not recover costs unless the verdict is more favorable to that defendant than the case evaluation as to that defendant.

(c) Except as provided by subrule (O)(10), in a personal injury action, for the purpose of subrule (O)(1), the verdict against a particular defendant shall not be adjusted by applying that defendant's proportion of fault as determined under MCL 600.6304(1)-(2).

(5) If the verdict awards equitable relief, costs may be awarded if the court determines that

(a) taking into account both monetary relief (adjusted as provided in subrule [O][3]) and equitable relief, the verdict is not more favorable to the rejecting party than the evaluation, and

(b) it is fair to award costs under all of the circumstances.

(6) For the purpose of this rule, actual costs are

(a) those costs taxable in any civil action, and

(b) a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the case evaluation.

For the purpose of determining taxable costs under this subrule and under MCR 2.625, the party entitled to recover actual costs under this rule shall be considered the prevailing party.

(7) Costs shall not be awarded if the case evaluation award was not unanimous.

(8) A request for costs under this subrule must be filed and served within 28 days after the entry of the judgment or entry of an order denying a timely motion for a new trial or to set aside the judgment.

(9) In an action under MCL 436.22, if the plaintiff rejects the award against the minor or alleged intoxicated person, or is deemed to have rejected such an award under subrule (L)(3)(c), the court shall not award costs against the plaintiff in favor of the minor or alleged intoxicated person unless it finds that the rejection was not motivated by the need to comply with MCL 436.22(6).

(10) In an action filed on or after March 28, 1996, for the purpose of subrule (O)(1), a verdict awarding damages for personal injury, property damage, or wrongful death shall be adjusted for relative fault as provided by MCL 600.6304.

(11) If the "verdict" is the result of a motion as provided by subrule (O)(2)(c), the court may, in the interest of justice, refuse to award actual costs.

Rule 2.404 Selection of Case Evaluation Panels

(A) Case Evaluator Selection Plans.

(1) Requirement. Each trial court that submits cases to case evaluation under MCR 2.403 shall adopt by local administrative order a plan to maintain a list of persons available to serve as case evaluators and to assign case evaluators from the list to panels. The plan must be in writing and available to the public in the ADR clerk's office.

(2) Alternative Plans.

(a) A plan adopted by a district or probate court may use the list of case evaluators and appointment procedure of the circuit court for the circuit in which the court is located.

(b) Courts in adjoining circuits or districts may jointly adopt and administer a case evaluation plan.

(c) If it is not feasible for a court to adopt its own plan because of the low volume of cases to be submitted or because of inadequate numbers of available case evaluators, the court may enter into an agreement with a neighboring court to refer cases for case evaluation under the other court's system. The agreement may provide for payment by the referring court to cover the cost of administering case evaluation. However, fees and costs may not be assessed against the parties to actions evaluated except as provided by MCR 2.403.

(d) Other alternative plans must be submitted as local court rules under MCR 8.112(A).

(B) Lists of Case Evaluators.

(1) Application. An eligible person desiring to serve as a case evaluator may apply to the ADR clerk to be placed on the list of case evaluators. Application forms shall be available in the office of the ADR clerk. The form shall include an optional section identifying the applicant's gender and racial/ethnic background. The form shall include a certification that

(a) the case evaluator meets the requirements for service under the court's selection plan, and

(b) the case evaluator will not discriminate against parties, attorneys, or other case evaluators on the basis of race, ethnic origin, gender, or other protected personal characteristic.

(2) Eligibility. To be eligible to serve as a case evaluator, a person must meet the qualifications provided by this subrule.

(a) The applicant must have been a practicing lawyer for at least 5 years and be a member in good standing of the State Bar of Michigan. The plan may not require membership in any other organization as a qualification for service as a case evaluator.

(b) An applicant must reside, maintain an office, or have an active practice in the jurisdiction for which the list of case evaluators is compiled.

(c) An applicant must demonstrate that a substantial portion of the applicant's practice for the last 5 years has been devoted to civil litigation

matters, including investigation, discovery, motion practice, case evaluation, settlement, trial preparation, and/or trial.

(d) If separate sublists are maintained for specific types of cases, the applicant must have had an active practice in the practice area for which the case evaluator is listed for at least the last 3 years.

If there are insufficient numbers of potential case evaluators meeting the qualifications stated in this rule, the plan may provide for consideration of alternative qualifications.

(3) Review of Applications. The plan shall provide for a person or committee to review applications annually, or more frequently if appropriate, and compile one or more lists of qualified case evaluators. Persons meeting the qualifications specified in this rule shall be placed on the list of approved case evaluators. Selections shall be made without regard to race, ethnic origin, or gender.

(a) If an individual performs this review function, the person must be an employee of the court.

(b) If a committee performs this review function, the following provisions apply.

(i) The committee must have at least three members.

(ii) The selection of committee members shall be designed to assure that the goals stated in subrule (D)(2) will be met.

(iii) A person may not serve on the committee more than 3 years in any 9 year period.

(c) Applicants who are not placed on the case evaluator list or lists shall be notified of that decision. The plan shall provide a procedure by which such an applicant may seek reconsideration of the decision by some other person or committee. The plan need not provide for a hearing of any kind as part of the reconsideration process. Documents considered in the initial review process shall be retained for at least the period of time during which the applicant can seek reconsideration of the original decision.

(4) Specialized Lists. If the number and qualifications of available case evaluators makes it practicable to do so, the ADR clerk shall maintain

(a) separate lists for various types of cases, and,

(b) where appropriate for the type of cases, separate sublists of case evaluators who primarily represent plaintiffs, primarily represent defendants, and neutral case evaluators whose practices are not identifiable as representing primarily plaintiffs or defendants.

(5) Reapplication. Persons shall be placed on the list of case evaluators for a fixed period of time, not to exceed 5 years, and must reapply at the end of that time in the same manner as persons seeking to be added to the list.

(6) Availability of Lists. The list of case evaluators must be available to the public in the ADR clerk's office.

(7) Removal from List. The plan must include a procedure for removal from the list of case evaluators who have demonstrated incompetency, bias, made themselves consistently unavailable to serve as a case evaluator, or for other just cause.

(8) The court may require case evaluators to attend orientation or training sessions or provide written materials explaining the case evaluation process and the operation of the court's case evaluation program. However, case evaluators may not be charged any fees or costs for such programs or materials.

(C) Assignments to Panels.

(1) Method of Assignment. The ADR clerk shall assign case evaluators to panels in a random or rotating manner that assures as nearly as possible that each case evaluator on a list or sublist is assigned approximately the same number of cases over a period of time. If a substitute case evaluator must be assigned, the same or similar assignment procedure shall be used to select the substitute. The ADR clerk shall maintain records of service of case evaluators on panels and shall make those records available on request.

(2) Assignment from Sublists. If sublists of plaintiff, defense, and neutral case evaluators are maintained for a particular type of case, the panel shall include one case evaluator who primarily represents plaintiffs, one case evaluator who primarily represents defendants, and one neutral case evaluator. If a judge is assigned to a panel as permitted by MCR 2.403(D)(3), the judge shall serve as the neutral case evaluator if sublists are maintained for that class of cases.

(3) Special Panels. On stipulation of the parties, the court may appoint a panel selected by the parties. In such a case, the qualification requirements of subrule (B)(2) do not apply, and the parties may agree to modification of the procedures for conduct of case evaluation. Nothing in this rule or MCR 2.403 precludes parties from stipulating to other ADR procedures that may aid in resolution of the case.

(D) Supervision of Selection Process.

(1) The chief judge shall exercise general supervision over the implementation of this rule and shall review the operation of the court's case evaluation plan at least annually to assure compliance with this rule. In the event of noncompliance, the court shall take such action as is needed. This action may include recruiting persons to serve as case evaluators or changing the court's case evaluation plan. The court shall submit an annual report to the State Court Administrator on the operation of the court's case evaluation program on a form provided by the State Court Administrator.

(2) In implementing the selection plan, the court, court employees, and attorneys involved in the procedure shall take all steps necessary to assure that as far as reasonably possible the list of case evaluators fairly reflects the racial, ethnic, and gender diversity of the members of the state bar in the jurisdiction for which the list is compiled who are eligible to serve as case evaluators.

Rule 2.405 Offers to Stipulate to Entry of Judgment

(A) Definitions. As used in this rule:

(1) "Offer" means a written notification to an adverse party of the offeror's willingness to stipulate to the entry of a judgment in a sum certain, which is deemed to include all costs and interest then accrued. If a party has made more than one offer, the most recent offer controls for the purposes of this rule.

(2) "Counteroffer" means a written reply to an offer, served within 21 days after service of the offer, in which a party rejects an offer of the adverse party and makes his or her own offer.

(3) "Average offer" means the sum of an offer and a counteroffer, divided by two. If no counteroffer is made, the offer shall be used as the average offer.

(4) "Verdict" includes,

(a) a jury verdict,

(b) a judgment by the court after a nonjury trial,

(c) a judgment entered as a result of a ruling on a motion after rejection of the offer of judgment.

(5) "Adjusted verdict" means the verdict plus interest and costs from the filing of the complaint through the date of the offer.

(6) "Actual costs" means the costs and fees taxable in a civil action and a reasonable attorney fee for services necessitated by the failure to stipulate to the entry of judgment.

(B) Offer. Until 28 days before trial, a party may serve on the adverse party a written offer to stipulate to the entry of a judgment for the whole or part of the claim, including interest and costs then accrued.

(C) Acceptance or Rejection of Offer.

(1) To accept, the adverse party, within 21 days after service of the offer, must serve on the other parties a written notice of agreement to stipulate to the entry of the judgment offered, and file the offer, the notice of acceptance, and proof of service of the notice with the court. The court shall enter a judgment according to the terms of the stipulation.

(2) An offer is rejected if the offeree

(a) expressly rejects it in writing, or

(b) does not accept it as provided by subrule (C)(1).

(3) A counteroffer may be accepted or rejected in the same manner as an offer.

(D) Imposition of Costs Following Rejection of Offer. If an offer is rejected, costs are payable as follows:

(1) If the adjusted verdict is more favorable to the offeror than the average offer, the offeree must pay to the offeror the offeror's actual costs incurred in the prosecution or defense of the action.

(2) If the adjusted verdict is more favorable to the offeree than the average offer, the offeror must pay to the offeree the offeree's actual costs incurred in the prosecution or defense of the action. However, an offeree who has not made a counteroffer may not recover actual costs unless the offer was made less than 42 days before trial.

(3) The court shall determine the actual costs incurred. The court may, in the interest of justice, refuse to award an attorney fee under this rule.

(4) Evidence of an offer is admissible only in a proceeding to determine costs.

(5) Proceedings under this rule do not affect a contract or relationship between a party and his or her attorney.

A request for costs under this subrule must be filed and served within 28 days after the entry of the judgment or entry of an order denying a timely motion for a new trial or to set aside the judgment.

(E) Relationship to Case Evaluation. Costs may not be awarded under this rule in a case that has been submitted to case evaluation under MCR 2.403 unless the case evaluation award was not unanimous.

Rule 2.406 Use of Facsimile Communication Equipment

(A) Definition. "Facsimile communication equipment" means a machine that transmits and reproduces graphic matter (as printing or still pictures) by means of signals sent over telephone lines.

(B) Use. Courts may permit the filing of pleadings, motions, affidavits, opinions, orders, or other documents by the use of facsimile communication equipment. Except as provided by MCR 2.002, a clerk shall not permit the filing of any document for which a filing fee is required unless the full amount of the filing fee is paid or deposited in advance with the clerk.

(C) Paper. All filings must be on good quality 8½ by 11-inch paper, and the print must be no smaller than 12-point type. These requirements do not apply to attachments and exhibits, but parties are encouraged to reduce or enlarge such documents to 8½ by 11 inches, if practical.

(D) Fees. In addition to fees required by statute, courts may impose fees for facsimile filings in accordance with the schedule that is established by the State Court Administrative Office for that purpose.

(E) Number of Pages. Courts may establish a maximum number of pages that may be sent at one time.

(F) Hours. Documents received during the regular business hours of the court will be deemed filed on that business day. Documents received after regular business hours and on weekends or designated court holidays will be deemed filed on the next business day. A document is considered filed if the transmission begins during regular business hours, as verified by the court, and the entire document is received.

(G) Originals. Documents filed by facsimile communication equipment shall be considered original documents. The filing party shall retain the documents that were transmitted by facsimile communication equipment.

(H) Signature. For purposes of MCR 2.114, a signature includes a signature transmitted by facsimile communication equipment.

Rule 2.410 Alternative Dispute Resolution

(A) Scope and Applicability of Rule; Definitions.

(1) All civil cases are subject to alternative dispute resolution processes unless otherwise provided by statute or court rule.

(2) For the purposes of this rule, alternative dispute resolution (ADR) means any process designed to resolve a legal dispute in the place of court adjudication, and includes settlement conferences ordered under MCR 2.401; case evaluation under MCR 2.403; mediation under MCR 2.411; domestic relations mediation under MCR 3.216; and other procedures provided by local court rule or ordered on stipulation of the parties.

(B) ADR Plan.

(1) Each trial court that submits cases to ADR processes under this rule shall adopt an ADR plan by local administrative order. The plan must be in writing and available to the public in the ADR clerk's office.

(2) At a minimum, the ADR plan must:

(a) designate an ADR clerk, who may be the clerk of the court, the court administrator, the assignment clerk, or some other person;

(b) if the court refers cases to mediation under MCR 2.411, specify how the list of persons available to serve as mediators will be maintained and the system by which mediators will be assigned from the list under MCR 2.411(B)(3);

(c) include provisions for disseminating information about the operation of the court's ADR program to litigants and the public; and

(d) specify how access to ADR processes will be provided for indigent persons. If a party qualifies for waiver of filing fees under MCR 2.002 or the court determines on other grounds that the party is unable to pay the full cost of an ADR provider's services, and free or low-cost dispute resolution services are not available, the court shall not order that party to participate in an ADR process.

(3) The plan may also provide for referral relationships with local dispute resolution centers, including those affiliated with the Community Dispute Resolution Program.

(4) Courts in adjoining circuits or districts may jointly adopt and administer an ADR plan.

(C) Order for ADR.

(1) At any time, after consultation with the parties, the court may order that a case be submitted to an appropriate ADR process. More than one such order may be entered in a case.

(2) Unless the specific rule under which the case is referred provides otherwise, in addition to other provisions the court considers appropriate, the order shall

(a) specify, or make provision for selection of, the ADR provider;

(b) provide time limits for initiation and completion of the ADR process; and

(c) make provision for the payment of the ADR provider.

(3) The order may require attendance at ADR proceedings as provided in subrule (D).

(D) Attendance at ADR Proceedings.

(1) Appearance of Counsel. The attorneys attending an ADR proceeding shall be thoroughly familiar with the case and have the authority necessary to fully participate in the proceeding. The court may direct that the attorneys who intend to try the case attend ADR proceedings.

(2) Presence of Parties. The court may direct that the parties to the action, agents of parties, representatives of lienholders, representatives of insurance carriers, or other persons:

(a) be present at the ADR proceeding or be immediately available at the time of the proceeding; and

(b) have information and authority adequate for responsible and effective participation in the conference for all purposes, including settlement.

The court's order may specify whether the availability is to be in person or by telephone.

(3) Failure to Attend.

(a) Failure of a party or the party's attorney or other representative to attend a scheduled ADR proceeding, as directed by the court, may constitute a default to which MCR 2.603 is applicable or a ground for dismissal under MCR 2.504(B).

(b) The court shall excuse a failure to attend an ADR proceeding, and shall enter a just order other than one of default or dismissal, if the court finds that

(i) entry of an order of default or dismissal would cause manifest injustice; or

(ii) the failure to attend was not due to the culpable negligence of the party or the party's attorney.

The court may condition the order on the payment by the offending party or attorney of reasonable expenses as provided in MCR 2.313(B)(2).

(E) Objections to ADR. Within 14 days after entry of an order referring a case to an ADR process, a party may move to set aside or modify the order. A timely motion must be decided before the case is submitted to the ADR process.

(F) Supervision of ADR Plan. The chief judge shall exercise general supervision over the implementation of this rule and shall review the operation of the court's ADR plan at least annually to assure compliance with this rule. In the event of noncompliance, the court shall take such action as is needed. This action may include recruiting persons to serve as ADR providers or changing the court's ADR plan.

Rule 2.411 Mediation

(A) Scope and Applicability of Rule; Definitions.

(1) This rule applies to cases that the court refers to mediation as provided in MCR 2.410. MCR 3.216 governs mediation of domestic relations cases.

(2) "Mediation" is a process in which a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement. A mediator has no authoritative decision-making power.

(B) Selection of Mediator.

(1) The parties may stipulate to the selection of a mediator. A mediator selected by agreement of the parties need not meet the qualifications set forth in subrule (F). The court must appoint a mediator stipulated to by the parties, provided the mediator is willing to serve within a period that would not interfere with the court's scheduling of the case for trial.

(2) If the order referring the case to mediation does not specify a mediator, the order shall set the date by which the parties are to have conferred on the selection of a mediator. If the parties do not advise the ADR clerk of the mediator agreed upon by that date, the court shall appoint one as provided in subrule (B)(3).

(3) The procedure for selecting a mediator from the approved list of mediators must be established by local ADR plan adopted under MCR 2.410(B). The ADR clerk shall assign mediators in a rotational manner that assures as nearly as possible that each mediator on the list is assigned approximately the same number of cases over a period of time. If a substitute mediator must be assigned, the same or similar assignment procedure shall be used to select the substitute.

(4) The rule for disqualification of a mediator is the same as that provided in MCR 2.003 for the disqualification of a judge. The mediator must promptly disclose any potential basis for disqualification.

(C) Scheduling and Conduct of Mediation.

(1) Scheduling. The order referring the case for mediation shall specify the time within which the mediation is to be completed. The ADR clerk shall send a copy of the order to each party and the mediator selected. Upon receipt of the

court's order, the mediator shall promptly confer with the parties to schedule mediation in accordance with the order. Factors that may be considered in arranging the process may include the need for limited discovery before mediation, the number of parties and issues, and the necessity for multiple sessions. The mediator may direct the parties to submit in advance, or bring to the mediation, documents or summaries providing information about the case.

(2) Conduct of Mediation. The mediator shall meet with counsel and the parties, explain the mediation process, and then proceed with the process. The mediator shall discuss with the parties and counsel, if any, the facts and issues involved. The mediation will continue until a settlement is reached, the mediator determines that a settlement is not likely to be reached, the end of the first mediation session, or until a time agreed to by the parties. Additional sessions may be held as long as it appears that the process may result in settlement of the case.

(3) Completion of Mediation. Within 7 days after the completion of the ADR process, the mediator shall so advise the court, stating only the date of completion of the process, who participated in the mediation, whether settlement was reached, and whether further ADR proceedings are contemplated.

(4) Settlement. If the case is settled through mediation, within 21 days the attorneys shall prepare and submit to the court the appropriate documents to conclude the case.

(5) Confidentiality. Statements made during the mediation, including statements made in written submissions, may not be used in any other proceedings, including trial. Any communications between the parties or counsel and the mediator relating to a mediation are confidential and shall not be disclosed without the written consent of all parties. This prohibition does not apply to

(a) the report of the mediator under subrule (C)(3),

(b) information reasonably required by court personnel to administer and evaluate the mediation program,

(c) information necessary for the court to resolve disputes regarding the mediator's fee, or

(d) information necessary for the court to consider issues raised under MCR 2.410(D)(3).

(D) Fees.

(1) A mediator is entitled to reasonable compensation based on an hourly rate commensurate with the mediator's experience and usual charges for services performed.

(2) The costs of mediation shall be divided between the parties on a pro-rata basis unless otherwise agreed by the parties or ordered by the court. The mediator's fee shall be paid no later than

(a) 42 days after the mediation process is concluded, or

(b) the entry of judgment, or

(c) the dismissal of the action,

whichever occurs first.

(3) If acceptable to the mediator, the court may order an arrangement for the payment of the mediator's fee other than that provided in subrule (D)(2).

(4) The mediator's fee is deemed a cost of the action, and the court may make an appropriate order to enforce the payment of the fee.

(5) If a party objects to the total fee of the mediator, the matter may be scheduled before the trial judge for determination of the reasonableness of the fee.

(E) List of Mediators.

(1) Application. An eligible person desiring to serve as a mediator may apply to the ADR clerk to be placed on the court's list of mediators. Application forms shall be available in the office of the ADR clerk.

(a) The form shall include a certification that

(i) the applicant meets the requirements for service under the court's selection plan;

(ii) the applicant will not discriminate against parties or attorneys on the basis of race, ethnic origin, gender, or other protected personal characteristic; and

(iii) the mediator will comply with the court's ADR plan, orders of the court regarding cases submitted to mediation, and the standards of conduct adopted by the State Court Administrator under subrule (G).

(b) On the form the applicant shall indicate the applicant's hourly rate for providing mediation services.

(c) The form shall include an optional section identifying the applicant's gender and racial/ethnic background.

(2) Review of Applications. The court's ADR plan shall provide for a person or committee to review applications annually, or more frequently if appropriate, and compile a list of qualified mediators.

(a) Persons meeting the qualifications specified in this rule shall be placed on the list of approved mediators. Approved mediators shall be placed on the list for a fixed period, not to exceed 5 years, and must reapply at the end of that time in the same manner as persons seeking to be added to the list.

(b) Selections shall be made without regard to race, ethnic origin, or gender. Residency or principal place of business may not be a qualification.

(c) The approved list and the applications of approved mediators, except for the optional section identifying the applicant's gender and racial/ethnic background, shall be available to the public in the office of the ADR clerk.

(3) Rejection; Reconsideration. Applicants who are not placed on the list shall be notified of that decision. Within 21 days of notification of the decision to reject an application, the applicant may seek reconsideration of the ADR clerk's decision by the Chief Judge. The court does not need to provide a hearing. Documents considered in the initial review process shall be retained for at least the period during which the applicant can seek reconsideration of the original decision.

(4) Removal from List. The ADR clerk may remove from the list mediators who have demonstrated incompetence, bias, made themselves consistently unavailable to serve as a mediator, or for other just cause. Within 21 days of notification of the decision to remove a mediator from the list, the mediator may seek reconsideration of the ADR clerk's decision by the Chief Judge. The court does not need to provide a hearing.

(F) Qualification of Mediators.

(1) Small Claims Mediation. District courts may develop individual plans to establish qualifications for persons serving as mediators in small claims cases.

(2) General Civil Mediation. To be eligible to serve as a general civil mediator, a person must meet the following minimum qualifications:

(a) Complete a training program approved by the State Court Administrator providing the generally accepted components of mediation skills;

(b) Have one or more of the following:

(i) Juris doctor degree or graduate degree in conflict resolution; or

(ii) 40 hours of mediation experience over two years, including mediation, co-mediation, observation, and role-playing in the context of mediation.

(c) Observe two general civil mediation proceedings conducted by an approved mediator, and conduct one general civil mediation to conclusion under the supervision and observation of an approved mediator.

(3) An applicant who has specialized experience or training, but does not meet the specific requirements of subrule (F)(2), may apply to the ADR clerk for special approval. The ADR clerk shall make the determination on the basis of criteria provided by the State Court Administrator. Service as a case evaluator under MCR 2.403 does not constitute a qualification for serving as a mediator under this section.

(4) Approved mediators are required to obtain 8 hours of advanced mediation training during each 2-year period. Failure to submit documentation establishing compliance is ground for removal from the list under subrule(E)(4).

(5) Additional qualifications may not be imposed upon mediators.

(G) Standards of Conduct for Mediators. The State Court Administrator shall develop and approve standards of conduct for mediators designed to promote honesty, integrity, and impartiality in providing court-connected dispute resolution services. These standards shall be made a part of all training and educational

requirements for court-connected programs, shall be provided to all mediators involved in court-connected programs, and shall be available to the public.

Rule 2.420 Settlements and Judgments for Minors and Legally Incapacitated Individuals

(A) Applicability. This rule governs the procedure to be followed for the entry of a consent judgment, a settlement, or a dismissal pursuant to settlement in an action brought for a minor or a legally incapacitated individual person by a next friend, guardian, or conservator or where a minor or a legally incapacitated individual is to receive a distribution from a wrongful death claim. Before an action is commenced, the settlement of a claim on behalf of a minor or a legally incapacitated individual is governed by the Estates and Protected Individuals Code.

(B) Procedure. In actions covered by this rule, a proposed consent judgment, settlement, or dismissal pursuant to settlement must be brought before the judge to whom the action is assigned, and the judge shall pass on the fairness of the proposal.

(1) If the claim is for damages because of personal injury to the minor or legally incapacitated individual,

(a) the minor or legally incapacitated individual shall appear in court personally to allow the judge an opportunity to observe the nature of the injury unless, for good cause, the judge excuses the minor's or legally incapacitated individual presence, and

(b) the judge may require medical testimony, by deposition or in court, if not satisfied of the extent of the injury.

(2) If the next friend, guardian, or conservator is a person who has made a claim in the same action and will share in the settlement or judgment of the minor or legally incapacitated individual, then a guardian ad litem for the minor or legally incapacitated individual must be appointed by the judge before whom the action is pending to approve the settlement or judgment.

(3) If a guardian or conservator for the minor or legally incapacitated individual has been appointed by a probate court the terms of the proposed settlement or judgment may be approved by the court in which the action is pending upon a finding that the payment arrangement is in the best interests of the minor or legally incapacitated individual, but no judgment or dismissal may enter until the court receives written verification from the probate court, on a form substantially in the form approved by the state court administrator, that it has passed on the sufficiency of the bond and the bond, if any, has been filed with the probate court.

(4) The following additional provisions apply to settlements for minors.

(a) If the settlement or judgment requires payment of more than $5,000 to the minor either immediately, or if the settlement or judgment is payable in installments that exceed $5000 in any single year during minority, a conservator must be appointed by the probate court before the entry of the judgment or dismissal. The judgment or dismissal must require that

payment be made payable to the minor's conservator on behalf of the minor. The court shall not enter the judgment or dismissal until it receives written verification, on a form substantially in the form approved by the state court administrator, that the probate court has passed on the sufficiency of the bond of the conservator.

(b) If the settlement or judgment does not require payment of more than $5,000 to the minor in any single year, the money may be paid in accordance with the provisions of MCL 700.5102.

(5) If a settlement or judgment provides for the creation of a trust for the minor or legally incapacitated individual, the circuit court shall determine the amount to be paid to the trust, but the trust shall not be funded without prior approval of the trust by the probate court pursuant to notice to all interested persons and a hearing.

Subchapter 2.500 Trials; Subpoenas; Juries

Rule 2.501 Scheduling Trials; Court Calendars

(A) Scheduling Conferences or Trial.

(1) Unless the further processing of the action is already governed by a scheduling order under MCR 2.401(B)(2), the court shall

(a) schedule a pretrial conference under MCR 2.401,

(b) schedule the action for an alternative dispute resolution process,

(c) schedule the action for trial, or

(d) enter another appropriate order to facilitate preparation of the action for trial.

(2) A court may adopt a trial calendar or other method for scheduling trials without the request of a party.

(B) Expedited Trials.

(1) On its own initiative, the motion of a party, or the stipulations of all parties, the court may shorten the time in which an action will be scheduled for trial, subject to the notice provisions of subrule (C).

(2) In scheduling trials, the court shall give precedence to actions involving a contest over the custody of minor children and to other actions afforded precedence by statute or court rule.

(C) Notice of Trial. Attorneys and parties must be given 28 days' notice of trial assignments, unless

(1) a rule or statute provides otherwise as to a particular type of action,

(2) the adjournment is of a previously scheduled trial, or

(3) the court otherwise directs for good cause.

Notice may be given orally if the party is before the court when the matter is scheduled, or by mailing or delivering copies of the notice or calendar to attorneys of record and to any party who appears on his or her own behalf.

(D) Attorney Scheduling Conflicts.

(1) The court and counsel shall make every attempt to avoid conflicts in the scheduling of trials.

(2) When conflicts in scheduled trial dates do occur, it is the responsibility of counsel to notify the court as soon as the potential conflict becomes evident. In such cases, the courts and counsel involved shall make every attempt to resolve the conflict in an equitable manner, with due regard for the priorities and time constraints provided by statute and court rule. When counsel cannot resolve conflicts through consultation with the individual courts, the judges shall consult directly to resolve the conflict.

(3) Except where a statute, court rule, or other special circumstance dictates otherwise, priority for trial shall be given to the case in which the pending trial date was set first.

Rule 2.502 Dismissal for Lack of Progress

(A) Notice of Proposed Dismissal.

(1) On motion of a party or on its own initiative, the court may order that an action in which no steps or proceedings appear to have been taken within 91 days be dismissed for lack of progress unless the parties show that progress is being made or that the lack of progress is not attributable to the party seeking affirmative relief.

(2) A notice of proposed dismissal may not be sent with regard to a case

(a) in which a scheduling order has been entered under MCR 2.401(B)(2) and the times for completion of the scheduled events have not expired,

(b) which is set for a conference, an alternative dispute resolution process, hearing, or trial.

(3) The notice shall be given in the manner provided in MCR 2.501(C) for notice of trial.

(B) Action by Court.

(1) If a party does not make the required showing, the court may direct the clerk to dismiss the action for lack of progress. Such a dismissal is without prejudice unless the court specifies otherwise.

(2) If an action is not dismissed under this rule, the court shall enter orders to facilitate the prompt and just disposition of the action.

(C) Reinstatement of Dismissed Action. On motion for good cause, the court may reinstate an action dismissed for lack of progress on terms the court deems just. On reinstating an action, the court shall enter orders to facilitate the prompt and just disposition of the action.

Rule 2.503 Adjournments

(A) Applicability. This rule applies to adjournments of trials, alternative dispute resolution processes, pretrial conferences, and all motion hearings.

(B) Motion or Stipulation for Adjournment.

(1) Unless the court allows otherwise, a request for an adjournment must be by motion or stipulation made in writing or orally in open court and is based on good cause.

(2) A motion or stipulation for adjournment must state

(a) which party is requesting the adjournment,

(b) the reason for it, and

(c) whether other adjournments have been granted in the proceeding and, if so, the number granted.

(3) The entitlement of a motion or stipulation for adjournment must specify whether it is the first or a later request, e.g., "Plaintiff's Request for Third Adjournment."

(C) Absence of Witness or Evidence.

(1) A motion to adjourn a proceeding because of the unavailability of a witness or evidence must be made as soon as possible after ascertaining the facts.

(2) An adjournment may be granted on the ground of unavailability of a witness or evidence only if the court finds that the evidence is material and that diligent efforts have been made to produce the witness or evidence.

(3) If the testimony or the evidence would be admissible in the proceeding, and the adverse party stipulates in writing or on the record that it is to be considered as actually given in the proceeding, there may be no adjournment unless the court deems an adjournment necessary.

(D) Order for Adjournment; Costs and Conditions.

(1) In its discretion the court may grant an adjournament to promote the cause of justice. An adjournment may be entered by order of the court either in writing or on the record in open court, and the order must state the reason for the adjournment.

(2) In granting an adjournment, the court may impose costs and conditions. When an adjournment is granted conditioned on payment of costs, the costs may be taxed summarily to be paid on demand of the adverse party or the adverse party's attorney, and the adjournment may be vacated if nonpayment is shown by affidavit.

(E) Rescheduling.

(1) Except as provided in subrule (E)(2), at the time the proceeding is adjourned under this rule, or as soon thereafter as possible, the proceeding must be rescheduled for a specific date and time.

(2) A court may place the matter on a specified list of actions or other matters which will automatically reappear before the court on the first available date.

(F) Death or Change of Status of Attorney. If the court finds that an attorney

(1) has died or is physically or mentally unable to continue to act as an attorney for a party,

(2) has been disbarred,

(3) has been suspended,

(4) has been placed on inactive status, or

(5) has resigned from active membership in the bar, the court shall adjourn a proceeding in which the attorney was acting for a party. The party is entitled to 28 days' notice that he or she must obtain a substitute attorney or advise the court in writing that the party intends to appear on his or her own behalf. See MCR 9.119.

Rule 2.504 Dismissal of Actions

(A) Voluntary Dismissal; Effect.

(1) By Plaintiff; by Stipulation. Subject to the provisions of MCR 2.420 and MCR 3.501(E), an action may be dismissed by the plaintiff without an order of the court and on the payment of costs

(a) by filing a notice of dismissal before service by the adverse party of an answer or of a motion under MCR 2.116, whichever first occurs; or

(b) by filing a stipulation of dismissal signed by all the parties.

Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a dismissal under subrule (A)(1)(a) operates as an adjudication on the merits when filed by a plaintiff who has previously dismissed an action in any court based on or including the same claim.

(2) By Order of Court. Except as provided in subrule (A)(1), an action may not be dismissed at the plaintiff's request except by order of the court on terms and conditions the court deems proper.

(a) If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the court shall not dismiss the action over the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court.

(b) Unless the order specifies otherwise, a dismissal under subrule (A)(2) is without prejudice.

(B) Involuntary Dismissal; Effect.

(1) If the plaintiff fails to comply with these rules or a court order, a defendant may move for dismissal of an action or a claim against that defendant.

(2) In an action tried without a jury, after the presentation of the plaintiff's evidence the defendant, without waiving the right to offer evidence if the motion is not granted, may move for dismissal on the ground that on the facts and the law the plaintiff has shown no right to relief. The court may then determine the facts and render judgment against the plaintiff, or may decline to render judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in MCR 2.517.

(3) Unless the court otherwise specifies in its order for dismissal, a dismissal under this subrule or a dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for failure to join a party under MCR 2.205, operates as an adjudication on the merits.

(C) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. This rule applies to the dismissal of a counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone, pursuant to subrule (A)(1), must be made before service by the adverse party of a responsive pleading or a motion under MCR 2.116, or, if no pleading or motion is filed, before the introduction of evidence at the trial.

(D) Costs of Previously Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action based on or including the same claim against the same defendant, the court may order the payment of such costs of the action previously dismissed as it deems proper and may stay proceedings until the plaintiff has complied with the order.

(E) Dismissal for Failure to Serve Defendant. An action may be dismissed as to a defendant under MCR 2.102(E).

Rule 2.505 Consolidation; Separate Trials

(A) Consolidation. When actions involving a substantial and controlling common question of law or fact are pending before the court, it may

(1) order a joint hearing or trial of any or all the matters in issue in the actions;

(2) order the actions consolidated; and

(3) enter orders concerning the proceedings to avoid unnecessary costs or delay.

(B) Separate Trials. For convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, the court may order a separate trial of one or more claims, cross-claims, counterclaims, third-party claims, or issues.

Rule 2.506 Subpoena; Order to Attend

(A) Attendance of Party or Witness.

(1) The court in which a matter is pending may by order or subpoena command a party or witness to appear for the purpose of testifying in open court on a date and time certain and from time to time and day to day thereafter until excused by the court, and to produce notes, records, documents, photographs, or other portable tangible things as specified.

(2) A subpoena may specify the form or forms in which electronically stored information is to be produced, subject to objection. If the subpoena does not so specify, the person responding to the subpoena must produce the information in a form or forms in which the person ordinarily maintains it, or in a form or forms that are reasonably usable. A person producing electronically stored information need only produce the same information in one form.

(3) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. In a hearing or submission under subrule (H), the person responding to the subpoena must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of MCR 2.302(C). The court may specify conditions for such discovery.

(4) The court may require a party and a representative of an insurance carrier for a party with information and authority adequate for responsible and effective participation in settlement discussions to be present or immediately available at trial.

(5) A subpoena may be issued only in accordance with this rule or MCR 2.305, 2.621(C), 9.112(D), 9.115(I)(1), or 9.212.

(B) Authorized Signatures.

(1) A subpoena signed by an attorney of record in the action or by the clerk of the court in which the matter is pending has the force and effect of an order signed by the judge of that court.

(2) For the purpose of this subrule, an authorized signature includes but is not limited to signatures written by hand, printed, stamped, typewritten, engraved, photographed, or lithographed.

(C) Notice to Witness of Required Attendance.

(1) The signer of a subpoena must issue it for service on the witness sufficiently in advance of the trial or hearing to give the witness reasonable notice of the date and time the witness is to appear. Unless the court orders otherwise, the subpoena must be served at least 2 days before the witness is to appear.

(2) The party having the subpoena issued must take reasonable steps to keep the witness informed of adjournments of the scheduled trial or hearing.

(3) If the served witness notifies the party that it is impossible for the witness to be present in court as directed, the party must either excuse the witness from attendance at that time or notify the witness that a special hearing may be held to adjudicate the issue.

(D) Form of Subpoena. A subpoena must:

(1) be entitled in the name of the People of the State of Michigan;

(2) be imprinted with the seal of the Supreme Court of Michigan;

(3) have typed or printed on it the name of the court in which the matter is pending;

(4) state the place where the trial or hearing is scheduled;

(5) state the title of the action in which the person is expected to testify;

(6) state the file designation assigned by the court; and

(7) state that failure to obey the commands of the subpoena or reasonable directions of the signer as to time and place to appear may subject the person to whom it is directed to penalties for contempt of court.

The state court administrator shall develop and approve a subpoena form for statewide use.

(E) Refusal of Witness to Attend or to Testify; Contempt.

(1) If a person fails to comply with a subpoena served in accordance with this rule or with a notice under subrule (C)(2), the failure may be considered a contempt of court by the court in which the action is pending.

(2) If a person refuses to be sworn or to testify regarding a matter not privileged after being ordered to do so by the court, the refusal may be considered a contempt of court.

(F) Failure of Party to Attend. If a party or an officer, director, or managing agent of a party fails to attend or produce documents or other tangible evidence pursuant to a subpoena or an order to attend, the court may:

(1) stay further proceedings until the order is obeyed;

(2) tax costs to the other party or parties to the action;

(3) strike all or a part of the pleadings of that party;

(4) refuse to allow that party to support or oppose designated claims and defenses;

(5) dismiss the action or any part of it; or

(6) enter judgment by default against that party.

(G) Service of Subpoena and Order to Attend; Fees.

(1) A subpoena may be served anywhere in Michigan in the manner provided by MCR 2.105. The fee for attendance and mileage provided by law must be tendered to the person on whom the subpoena is served at the time of service. Tender must be made in cash, by money order, by cashier's check, or by a check drawn on the account of an attorney of record in the action or the attorney's authorized agent.

(2) A subpoena may also be served by mailing to a witness a copy of the subpoena and a postage-paid card acknowledging service and addressed to the party requesting service. The fees for attendance and mileage provided by law are to be given to the witness after the witness appears at the court, and the acknowledgment card must so indicate. If the card is not returned, the subpoena must be served in the manner provided in subrule (G)(1).

(3) A subpoena or order to attend directed to a party, or to an officer, director, or managing agent of a party, may be served in the manner provided by MCR 2.107, and fees and mileage need not be paid.

(H) Hearing on Subpoena or Order.

(1) A person served with a subpoena or order to attend may appear before the court in person or by writing to explain why the person should not be compelled to comply with the subpoena, order to attend, or directions of the party having it issued.

(2) The court may direct that a special hearing be held to adjudicate the issue.

(3) For good cause with or without a hearing, the court may excuse a witness from compliance with a subpoena, the directions of the party having it issued, or an order to attend.

(4) A person must comply with the command of a subpoena unless relieved by order of the court or written direction of the person who had the subpoena issued.

(I) Subpoena for Production of Hospital Medical Records.

(1) Except as provided in subrule (I)(5), a hospital may comply with a subpoena calling for production of medical records belonging to the hospital in the manner provided in this subrule. This subrule does not apply to x-ray films or to other portions of a medical record that are not susceptible to photostatic reproduction.

(a) The hospital may deliver or mail to the clerk of the court in which the action is pending, without cost to the parties, a complete and accurate copy of the original record.

(b) The copy of the record must be accompanied by a sworn certificate, in the form approved by the state court administrator, signed by the medical record librarian or another authorized official of the hospital, verifying that it is a complete and accurate reproduction of the original record.

(c) The envelope or other container in which the record is delivered to the court shall be clearly marked to identify its contents. If the hospital wishes the record returned when it is no longer needed in the action, that fact must be stated on the container, and, with the record, the hospital must provide the clerk with a self-addressed, stamped envelope that the clerk may use to return the record.

(d) The hospital shall promptly notify the attorney for the party who caused the subpoena to be issued that the documents involved have been delivered or mailed to the court in accordance with subrule (I)(1).

(2) The clerk shall keep the copies sealed in the container in which they were supplied by the hospital. The container shall be clearly marked to identify the contents, the name of the patient, and the title and number of the action. The container shall not be opened except at the direction of the court.

(3) If the hospital has requested that the record be returned, the clerk shall return the record to the hospital when 42 days have passed after a final order terminating the action, unless an appeal has been taken. In the event of an appeal, the record shall be returned when 42 days have passed after a final order terminating the appeal. If the hospital did not request that the record be returned as provided in subrule (I)(1)(c), the clerk may destroy the record after the time provided in this subrule.

(4) The admissibility of the contents of medical records produced under this rule or under MCR 2.314 is not affected or altered by these procedures and remains subject to the same objections as if the original records were personally produced by the custodian at the trial or hearing.

(5) A party may have a subpoena issued directing that an original record of a person be produced at the trial or hearing by the custodian of the record. The subpoena must specifically state that the original records, not copies, are

required. A party may also require, by subpoena, the attendance of the custodian without the records.

Rule 2.507 Conduct of Trials

(A) Opening Statements. Before the introduction of evidence, the attorney for the party who is to commence the evidence must make a full and fair statement of that party's case and the facts the party intends to prove. Immediately thereafter or immediately before the introduction of evidence by the adverse party, the attorney for the adverse party must make a like statement. Opening statements may be waived with the consent of the court and the opposing attorney.

(B) Opening the Evidence. Unless otherwise ordered by the court, the plaintiff must first present the evidence in support of the plaintiff's case. However, the defendant must first present the evidence in support of his or her case, if

(1) the defendant's answer has admitted facts and allegations of the plaintiff's complaint to the extent that, in the absence of further statement on the defendant's behalf, judgment should be entered on the pleadings for the plaintiff, and

(2) the defendant has asserted a defense on which the defendant has the burden of proof, either as a counterclaim or as an affirmative defense.

(C) Examination and Cross-Examination of Witnesses. Unless otherwise ordered by the court, no more than one attorney for a party may examine or cross-examine a witness.

(D) Interpreters. The court may appoint an interpreter of its own selection and may set reasonable compensation for the interpreter. The compensation is to be paid out of funds provided by law or by one or more of the parties, as the court directs, and may be taxed as costs, in the discretion of the court.

(E) Final Arguments. After the close of all the evidence, the parties may rest their cases with or without final arguments. The party who commenced the evidence is entitled to open the argument and, if the opposing party makes an argument, to make a rebuttal argument not beyond the issues raised in the preceding arguments.

(F) Time Allowed for Opening Statements and Final Arguments. The court may limit the time allowed each party for opening statements and final arguments. It shall give the parties adequate time for argument, having due regard for the complexity of the action, and may make separate time allowances for co-parties whose interests are adverse.

(G) Agreements to be in Writing. An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney.

Rule 2.508 Jury Trial of Right

(A) Right Preserved. The right of trial by jury as declared by the constitution must be preserved to the parties inviolate.

(B) Demand for Jury.

(1) A party may demand a trial by jury of an issue as to which there is a right to trial by jury by filing a written demand for a jury trial within 28 days after the filing of the answer or a timely reply. A party may include the demand in a pleading if notice of the demand is included in the caption of the pleading. The jury fee provided by law must be paid at the time the demand is filed.

(2) If a party appealing to the circuit court from a municipal court desires a trial by jury of an issue triable of right, demand for jury must be included in the claim of appeal. If another party desires trial by jury of an issue triable of right, the demand must be included in the party's notice of appearance.

(3)(a) If a case is entirely removed from circuit court to district court, or is entirely removed or transferred from district court to circuit court, a timely demand for a trial by jury in the court from which the case is removed or transferred remains effective in the court to which the case is removed or transferred. If a case is entirely removed or transferred from district court to circuit court, and if the amount paid to the district court for the jury fee is less than the circuit court jury fee, then the party requesting the jury shall pay the difference to the circuit court. If a case is entirely removed from circuit court to district court, no additional jury fee is to be paid to the district court nor is there to be a refund of any amount by which the circuit court jury fee exceeds the district court jury fee.

(b) If part of a case is removed from circuit court to district court, or part of a case is removed or transferred from district court to circuit court, but a portion of the case remains in the court from which the case is removed or transferred, then a demand for a trial by jury in the court from which the case is removed or transferred is not effective in the court to which the case is removed or transferred. A party who seeks a trial by jury in the court to which the case is partially removed or transferred must file a written demand for a trial by jury within 21 days of the removal or transfer order, and must pay the jury fee provided by law, even if the jury fee was paid in the court from which the case is removed or transferred.

(c) The absence of a timely demand for a trial by jury in the court from which a case is entirely or partially removed or transferred does not preclude filing a demand for a trial by jury in the court to which the case is removed or transferred. A party who seeks a trial by jury in the court to which the case is removed or transferred must file a written demand for a trial by jury within 21 days of the removal or transfer order, and must pay the jury fee provided by law.

(d) A party who is added to a case after it has been removed or transferred may demand trial by jury in accordance with paragraph (B)(1).

(C) Specifications of Issues.

(1) In a demand for jury trial, a party may specify the issues the party wishes so tried; otherwise, the party is deemed to have demanded trial by jury of all the issues so triable.

(2) If a party has demanded trial by jury of only some of the issues, another party, within 14 days after service of a copy of the demand or within less time as the court may order, may serve a demand for trial by jury of another or all the issues of fact in the action.

(D) Waiver; Withdrawal.

(1) A party who fails to file a demand or pay the jury fee as required by this rule waives trial by jury.

(2) Waiver of trial by jury is not revoked by an amendment of a pleading asserting only a claim or defense arising out of the conduct, transaction, or occurrence stated, or attempted to be stated, in the original pleading.

(3) A demand for trial by jury may not be withdrawn without the consent, expressed in writing or on the record, of the parties or their attorneys.

Rule 2.509 Trial by Jury or by Court

(A) By Jury. If a jury has been demanded as provided in MCR 2.508, the action or appeal must be designated in the court records as a jury action. The trial of all issues so demanded must be by jury unless

(1) the parties agree otherwise by stipulation in writing or on the record, or

(2) the court on motion or on its own initiative finds that there is no right to trial by jury of some or all of those issues.

(B) By Court. Issues for which a trial by jury has not been demanded as provided in MCR 2.508 will be tried by the court. In the absence of a demand for a jury trial of an issue as to which a jury demand might have been made of right, the court in its discretion may order a trial by jury of any or all issues.

(C) Sequence of Trial. In an action in which some issues are to be tried by jury and others by the court, or in which a number of claims, cross-claims, defenses, counterclaims, or third-party claims involve a common issue, the court may determine the sequence of trial of the issues, preserving the constitutional right to trial by jury according to the basic nature of every issue for which a demand for jury trial has been made under MCR 2.508.

(D) Advisory Jury and Trial by Consent. In appeals to circuit court from a municipal court and in actions involving issues not triable of right by a jury because of the basic nature of the issue, the court on motion or on its own initiative may

(1) try the issues with an advisory jury; or

(2) with the consent of all parties, order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

Rule 2.510 Juror Personal History Questionnaire

(A) Form. The state court administrator shall adopt a juror personal history questionnaire.

(B) Completion of Questionnaire.

(1) The court clerk or the jury board, as directed by the chief judge, shall supply each juror drawn for jury service with a questionnaire in the form adopted pursuant to subrule (A). The court clerk or the jury board shall direct the juror to complete the questionnaire in the juror's own handwriting before the juror is called for service.

(2) Refusal to answer the questions on the questionnaire, or answering the questionnaire falsely, is contempt of court.

(C) Filing the Questionnaire.

(1) On completion, the questionnaire shall be filed with the court clerk or the jury board, as designated under subrule (B)(1). The only persons allowed to examine the questionnaire are:

(a) the judges of the court;

(b) the court clerk and deputy clerks;

(c) parties to actions in which the juror is called to serve and their attorneys; and

(d) persons authorized access by court rule or by court order.

(2) The attorneys must be given a reasonable opportunity to examine the questionnaires before being called on to challenge for cause.

(a) The state court administrator shall develop model procedures for providing attorneys and parties reasonable access to juror questionnaires.

(b) Each court shall select and implement one of these procedures by local administrative order adopted pursuant to MCR 8.112(B). If the state court administrator determines that, given the circumstances existing in an individual court, the procedure selected does not provide reasonable access, the state court administrator may direct the court to implement one of the other model procedures.

(c) If the procedure selected allows attorneys or parties to receive copies of juror questionnaires, an attorney or party may not release them to any person who would not be entitled to examine them under subrule (C)(1).

(3) The questionnaires must be kept on file for 3 years from the time they are filled out.

(D) Summoning Jurors for Court Attendance. The court clerk, the court administrator, the sheriff, or the jury board, as designated by the chief judge, shall summon jurors for court attendance at the time and in the manner directed by the chief judge or the judge to whom the action in which jurors are being called for service is assigned. For a juror's first required court appearance, service must be by written notice addressed to the juror at the juror's residence as shown by the

records of the clerk or jury board. The notice may be by ordinary mail or by personal service. For later service, notice may be in the manner directed by the court. The person giving notice to jurors shall keep a record of the notice and make a return if directed by the court. The return is presumptive evidence of the fact of service.

(E) Special Provision Pursuant to MCL 600.1324. If a city located in more than one county is entirely within a single district of the district court, jurors shall be selected for court attendance at that district from a list that includes the names and addresses of jurors from the entire city, regardless of the county where the juror resides or the county where the cause of action arose.

Rule 2.511 Impaneling the Jury

(A) Selection of Jurors.

(1) Persons who have not been discharged or excused as prospective jurors by the court are subject to selection for the action or actions to be tried during their term of service as provided by law.

(2) In an action that is to be tried before a jury, the names or corresponding numbers of the prospective jurors shall be deposited in a container, and the prospective jurors must be selected for examination by a random blind draw from the container.

(3) The court may provide for random selection of prospective jurors for examination from less than all of the prospective jurors not discharged or excused.

(4) Prospective jurors may be selected by any other fair and impartial method directed by the court or agreed to by the parties.

(B) Alternate Jurors. The court may direct that 7 or more jurors be impaneled to sit. After the instructions to the jury have been given and the action is ready to be submitted, unless the parties have stipulated that all the jurors may deliberate, the names of the jurors must be placed in a container and names drawn to reduce the number of jurors to 6, who shall constitute the jury. The court may retain the alternate jurors during deliberations. If the court does so, it shall instruct the alternate jurors not to discuss the case with any other person until the jury completes its deliberations and is discharged. If an alternate juror replaces a juror after the jury retires to consider its verdict, the court shall instruct the jury to begin its deliberations anew.

(C) Examination of Jurors. The court may conduct the examination of prospective jurors or may permit the attorneys to do so.

(D) Challenges for Cause. The parties may challenge jurors for cause, and the court shall rule on each challenge. A juror challenged for cause may be directed to answer questions pertinent to the inquiry. It is grounds for a challenge for cause that the person:

(1) is not qualified to be a juror;

(2) is biased for or against a party or attorney;

(3) shows a state of mind that will prevent the person from rendering a just verdict, or has formed a positive opinion on the facts of the case or on what the outcome should be;

(4) has opinions or conscientious scruples that would improperly influence the person's verdict;

(5) has been subpoenaed as a witness in the action;

(6) has already sat on a trial of the same issue;

(7) has served as a grand or petit juror in a criminal case based on the same transaction;

(8) is related within the ninth degree (civil law) of consanguinity or affinity to one of the parties or attorneys;

(9) is the guardian, conservator, ward, landlord, tenant, employer, employee, partner, or client of a party or attorney;

(10) is or has been a party adverse to the challenging party or attorney in a civil action, or has complained of or has been accused by that party in a criminal prosecution;

(11) has a financial interest other than that of a taxpayer in the outcome of the action;

(12) is interested in a question like the issue to be tried.

Exemption from jury service is the privilege of the person exempt, not a ground for challenge.

(E) Peremptory Challenges.

(1) A juror peremptorily challenged is excused without cause.

(2) Each party may peremptorily challenge three jurors. Two or more parties on the same side are considered a single party for purposes of peremptory challenges. However, when multiple parties having adverse interests are aligned on the same side, three peremptory challenges are allowed to each party represented by a different attorney, and the court may allow the opposite side a total number of peremptory challenges not exceeding the total number of peremptory challenges allowed to the multiple parties.

(3) Peremptory challenges must be exercised in the following manner:

(a) First the plaintiff and then the defendant may exercise one or more peremptory challenges until each party successively waives further peremptory challenges or all the challenges have been exercised, at which point jury selection is complete.

(b) A "pass" is not counted as a challenge but is a waiver of further challenge to the panel as constituted at that time.

(c) If a party has exhausted all peremptory challenges and another party has remaining challenges, that party may continue to exercise their remaining peremptory challenges until such challenges are exhausted.

(F) Discrimination in the Selection Process.

(1) No person shall be subjected to discrimination during voir dire on the basis of race, color, religion, national origin, or sex.

(2) Discrimination during voir dire on the basis of race, color, religion, national origin, or sex for the purpose of achieving what the court believes to be a balanced, proportionate, or representative jury in terms of these characteristics shall not constitute an excuse or justification for a violation of this subsection.

(G) Replacement of Challenged Jurors. After the jurors have been seated in the jurors' box and a challenge for cause is sustained or a peremptory challenge or challenges exercised, another juror or other jurors must be selected and examined. Such jurors are subject to challenge as are previously seated jurors.

(H) Oath of Jurors. The jury must be sworn by the clerk substantially as follows:

"Each of you do solemnly swear (or affirm) that, in this action now before the court, you will justly decide the questions submitted to you, that, unless you are discharged by the court from further deliberation, you will render a true verdict, and that you will render your verdict only on the evidence introduced and in accordance with the instructions of the court, so help you God."

Rule 2.512 Rendering Verdict

(A) Majority Verdict; Stipulations Regarding Number of Jurors and Verdict. The parties may stipulate in writing or on the record that

(1) the jury will consist of any number less than 6,

(2) a verdict or a finding of a stated majority of the jurors will be taken as the verdict or finding of the jury, or

(3) if more than six jurors were impaneled, all of the jurors may deliberate.

Except as provided in MCR 5.740(C), in the absence of such stipulation, a verdict in a civil action tried by 6 jurors will be received when 5 jurors agree.

(B) Return; Poll.

(1) The jury must return its verdict in open court.

(2) A party may require a poll to be taken by the court asking each juror if it is his or her verdict.

(3) If the number of jurors agreeing is less than required, the jury must be sent out for further deliberation; otherwise the verdict is complete, and the court shall discharge the jury.

(C) Discharge From Action; New Jury. The court may discharge a jury from the action:

(1) because of an accident or calamity requiring it;

(2) by consent of all the parties;

(3) whenever an adjournment or mistrial is declared;

(4) whenever the jurors have deliberated until it appears that they cannot agree.

The court may order another jury to be drawn, and the same proceedings may be had before the new jury as might have been had before the jury discharged.

(D) Responsibility of Officers.

(1) All court officers, including trial attorneys, must attend during the trial of an action until the verdict of the jury is announced.

(2) A trial attorney may, on request, be released by the court from further attendance, or the attorney may designate an associate or other attorney to act for him or her during the deliberations of the jury.

Rule 2.513 View

(A) By Jury. On motion of either party or on its own initiative, the court may order an officer to take the jury as a whole to view property or a place where a material event occurred. During the view, no person other than the officer designated by the court may speak to the jury concerning a subject connected with the trial. The court may order the party requesting a jury view to pay the expenses of the view.

(B) By Court. On application of either party or on its own initiative, the court sitting as trier of fact without a jury may view property or a place where a material event occurred.

Rule 2.514 Special Verdicts

(A) Use of Special Verdicts; Form. The court may require the jury to return a special verdict in the form of a written finding on each issue of fact, rather than a general verdict. If a special verdict is required, the court shall, in advance of argument and in the absence of the jury, advise the attorneys of this fact and, on the record or in writing, settle the form of the verdict. The court may submit to the jury:

(1) written questions that may be answered categorically and briefly;

(2) written forms of the several special findings that might properly be made under the pleadings and evidence; or

(3) the issues by another method, and require the written findings it deems most appropriate.

The court shall give to the jury the necessary explanation and instruction concerning the matter submitted to enable the jury to make its findings on each issue.

(B) Judgment. After a special verdict is returned, the court shall enter judgment in accordance with the jury's findings.

(C) Failure to Submit Question; Waiver; Findings by Court. If the court omits from the special verdict form an issue of fact raised by the pleadings or the evidence, a party waives the right to a trial by jury of the issue omitted unless before the jury retires the party demands its submission to the jury. The court may make a finding

as to an issue omitted without a demand; or, if the court fails to do so, it is deemed to have made a finding in accord with the judgment on the special verdict.

Rule 2.515 Motion for Directed Verdict

A party may move for a directed verdict at the close of the evidence offered by an opponent. The motion must state specific grounds in support of the motion. If the motion is not granted, the moving party may offer evidence without having reserved the right to do so, as if the motion had not been made. A motion for a directed verdict that is not granted is not a waiver of trial by jury, even though all parties to the action have moved for directed verdicts.

Rule 2.516 Instructions to Jury

(A) Request for Instructions.

(1) At a time the court reasonably directs, the parties must file written requests that the court instruct the jury on the law as stated in the requests. In the absence of a direction from the court, a party may file a written request for jury instructions at or before the close of the evidence.

(2) In addition to requests for instructions submitted under subrule (A)(1), after the close of the evidence each party shall submit in writing to the court a statement of the issues and may submit the party's theory of the case as to each issue. The statement must be concise, be narrative in form, and set forth as issues only those disputed propositions of fact which are supported by the evidence. The theory may include those claims supported by the evidence or admitted.

(3) A copy of the requested instructions must be served on the adverse parties in accordance with MCR 2.107.

(4) The court shall inform the attorneys of its proposed action on the requests before their arguments to the jury.

(5) The court need not give the statements of issues or theories of the case in the form submitted if the court presents to the jury the material substance of the issues and theories of each party.

(B) Instructing the Jury.

(1) After the jury is sworn and before evidence is taken, the court shall give such preliminary instructions regarding the duties of the jury, trial procedure, and the law applicable to the case as are reasonably necessary to enable the jury to understand the proceedings and the evidence. MCR 2.516(D)(2) does not apply to such preliminary instructions.

(2) At any time during the trial, the court may, with or without request, instruct the jury on a point of law if the instruction will materially aid the jury to understand the proceedings and arrive at a just verdict.

(3) Before or after arguments or at both times, as the court elects, the court shall instruct the jury on the applicable law, the issues presented by the case, and, if a party requests as provided in subrule (A)(2), that party's theory of the

case. The court, at its discretion, may also comment on the evidence, the testimony, and the character of the witnesses as the interests of justice require.

(4) While the jury is deliberating, the court may further instruct the jury in the presence of or after reasonable notice to the parties.

(5) Either on the request of a party or on the court's own motion, the court may provide the jury with

(a) a full set of written instructions,

(b) a full set of electronically recorded instructions, or

(c) a partial set of written or recorded instructions if the jury asks for clarification or restatement of a particular instruction or instructions or if the parties agree that a partial set may be provided and agree on the portions to be provided.

If it does so, the court must ensure that such instructions are made a part of the record.

(C) Objections. A party may assign as error the giving of or the failure to give an instruction only if the party objects on the record before the jury retires to consider the verdict (or, in the case of instructions given after deliberations have begun, before the jury resumes deliberations), stating specifically the matter to which the party objects and the grounds for the objection. Opportunity must be given to make the objection out of the hearing of the jury.

(D) Model Civil Jury Instructions.

(1) The Committee on Model Civil Jury Instructions appointed by the Supreme Court has the authority to adopt model civil jury instructions (M Civ JI) and to amend or repeal those instructions approved by the predecessor committee. Before adopting, amending, or repealing an instruction, the committee shall publish notice of the committee's intent, together with the text of the instruction to be adopted, or the amendment to be made, or a reference to the instruction to be repealed, in the manner provided in MCR 1.201. The notice shall specify the time and manner for commenting on the proposal. The committee shall thereafter publish notice of its final action on the proposed change, including, if appropriate, the effective date of the adoption, amendment, or repeal. A model civil jury instruction does not have the force and effect of a court rule.

(2) Pertinent portions of the instructions approved by the Committee on Model Civil Jury Instructions or its predecessor committee must be given in each action in which jury instructions are given if

(a) they are applicable,

(b) they accurately state the applicable law, and

(c) they are requested by a party.

(3) Whenever the committee recommends that no instruction be given on a particular matter, the court shall not give an instruction unless it specifically finds for reasons stated on the record that

(a) the instruction is necessary to state the applicable law accurately, and

(b) the matter is not adequately covered by other pertinent model civil jury instructions.

(4) This subrule does not limit the power of the court to give additional instructions on applicable law not covered by the model instructions . Additional instructions when given must be patterned as nearly as practicable after the style of the model instructions and must be concise, understandable, conversational, unslanted, and nonargumentative.

Rule 2.517 Findings by Court

(A) Requirements.

(1) In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.

(2) Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without over elaboration of detail or particularization of facts.

(3) The court may state the findings and conclusions on the record or include them in a written opinion.

(4) Findings of fact and conclusions of law are unnecessary in decisions on motions unless findings are required by a particular rule. See, e.g., MCR 2.504(B).

(5) The clerk shall notify the attorneys for the parties of the findings of the court.

(6) Requests for findings are not necessary for purposes of review.

(7) No exception need be taken to a finding or decision.

(B) Amendment. On motion of a party made within 21 days after entry of judgment, the court may amend its findings or make additional findings, and may amend the judgment accordingly. The motion may be made with a motion for new trial pursuant to MCR 2.611. When findings of fact are made in an action tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether the party raising the question has objected to the findings or has moved to amend them or for judgment.

Rule 2.518 Receipt and Return or Disposal of Exhibits

(A) Receipt of Exhibits. Exhibits introduced into evidence at or during court proceedings shall be received and maintained as provided by Michigan Supreme Court trial court case file management standards.

(B) Return or Disposal of Exhibits. At the conclusion of a trial or hearing, exhibits should be retrieved by the parties submitting them except that any weapons and drugs shall be returned to the confiscating agency for proper disposition. If the exhibits are not retrieved by the parties within 56 days after conclusion of the trial

or hearing, the court may properly dispose of the exhibits without notice to the parties.

Subchapter 2.600 Judgments and Orders; Postjudgment Proceedings

Rule 2.601 Judgments

(A) Relief Available. Except as provided in subrule (B), every final judgment may grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded that relief in his or her pleadings.

(B) Default Judgment. A judgment by default may not be different in kind from, nor exceed in amount, the relief demanded in the pleading, unless notice has been given pursuant to MCR 2.603(B)(1).

Rule 2.602 Entry of Judgments and Orders

(A) Signing; Statement; Date of Entry.

(1) Except as provided in this rule and in MCR 2.603, all judgments and orders must be in writing, signed by the court and dated with the date they are signed.

(2) The date of signing an order or judgment is the date of entry.

(3) Each judgment must state, immediately preceding the judge's signature, whether it resolves the last pending claim and closes the case. Such a statement must also appear on any other order that disposes of the last pending claim and closes the case.

(B) Procedure of Entry of Judgments and Orders. An order or judgment shall be entered by one of the following methods:

(1) The court may sign the judgment or order at the time it grants the relief provided by the judgment or order.

(2) The court shall sign the judgment or order when its form is approved by all the parties and if, in the court's determination, it comports with the court's decision.

(3) Within 7 days after the granting of the judgment or order, or later if the court allows, a party may serve a copy of the proposed judgment or order on the other parties, with a notice to them that it will be submitted to the court for signing if no written objections to its accuracy or completeness are filed with the court clerk within 7 days after service of the notice. The party must file with the court clerk the original of the proposed judgment or order and proof of its service on the other parties.

(a) If no written objections are filed within 7 days, the clerk shall submit the judgment or order to the court, and the court shall then sign it if, in the court's determination, it comports with the court's decision. If the proposed judgment or order does not comport with the decision, the court shall direct the clerk to notify the parties to appear before the court on a specified date for settlement of the matter.

(b) Objections regarding the accuracy or completeness of the judgment or order must state with specificity the inaccuracy or omission.

(c) The party filing the objections must serve them on all parties as required by MCR 2.107, together with a notice of hearing and an alternative proposed judgment or order.

(4) A party may prepare a proposed judgment or order and notice it for settlement before the court.

(C) Filing. The original of the judgment or order must be placed in the file.

(D) Service.

(1) The party securing the signing of the judgment or order shall serve a copy, within 7 days after it has been signed, on all other parties, and file proof of service with the court clerk.

(2) If a judgment for reimbursement to the state for the value of game or protected animals is entered pursuant to MCL 324.40119 or for the value of fish is entered pursuant to MCL 324.48740, the clerk shall provide a copy of the judgment to the Department of Natural Resources. The judgment may be enforced as a civil judgment.

Rule 2.603 Default and Default Judgment

(A) Entry of Default; Notice; Effect.

(1) If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, and that fact is made to appear by affidavit or otherwise, the clerk must enter the default of that party.

(2) Notice that the default has been entered must be sent to all parties who have appeared and to the defaulted party. If the defaulted party has not appeared, the notice to the defaulted party may be served by personal service, by ordinary first-class mail at his or her last known address or the place of service, or as otherwise directed by the court.

(a) In the district court, the court clerk shall send the notice.

(b) In all other courts, the notice must be sent by the party who sought entry of the default. Proof of service and a copy of the notice must be filed with the court.

(3) Once the default of a party has been entered, that party may not proceed with the action until the default has been set aside by the court in accordance with subrule (D) or MCR 2.612.

(B) Default Judgment.

(1) Notice of Request for Default Judgment.

(a) A party requesting a default judgment must give notice of the request to the defaulted party, if

(i) the party against whom the default judgment is sought has appeared in the action;

(ii) the request for entry of a default judgment seeks relief different in kind from, or greater in amount than, that stated in the pleadings; or

(iii) the pleadings do not state a specific amount demanded.

(b) The notice required by this subrule must be served at least 7 days before entry of the requested default judgment.

(c) If the defaulted party has appeared, the notice may be given in the manner provided by MCR 2.107. If the defaulted party has not appeared, the notice may be served by personal service, by ordinary first-class mail at the defaulted party's last known address or the place of service, or as otherwise directed by the court.

(d) If the default is entered for failure to appear for a scheduled trial, notice under this subrule is not required.

(2) Default Judgment Entered by Clerk. On request of the plaintiff supported by an affidavit as to the amount due, the clerk may sign and enter a default judgment for that amount and costs against the defendant, if

(a) the plaintiff's claim against a defendant is for a sum certain or for a sum that can by computation be made certain;

(b) the default was entered because the defendant failed to appear; and

(c) the defaulted defendant is not an infant or incompetent person.

(3) Default Judgment Entered by Court. In all other cases, the party entitled to a default judgment must file a motion that asks the court to enter the default judgment.

(a) A default judgment may not be entered against a minor or an incompetent person unless the person is represented in the action by a conservator, guardian ad litem, or other representative.

(b) If, in order for the court to enter a default judgment or to carry it into effect, it is necessary to

(i) take an account,

(ii) determine the amount of damages,

(iii) establish the truth of an allegation by evidence, or

(iv) investigate any other matter,

the court may conduct hearings or order references it deems necessary and proper, and shall accord a right of trial by jury to the parties to the extent required by the constitution.

(4) Notice of Entry of Default Judgment. The court clerk must promptly mail notice of entry of a default judgment to all parties. The notice to the defendant shall be mailed to the defendant's last known address or the address of the place of service. The clerk must keep a record that notice was given.

(C) Nonmilitary Affidavit. Nonmilitary affidavits required by law must be filed before judgment is entered in actions in which the defendant has failed to appear.

(D) Setting Aside Default or Default Judgment.

(1) A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.

(2) Except as provided in MCR 2.612, if personal service was made on the party against whom the default was taken, the default, and default judgment if one has been entered, may be set aside only if the motion is filed

(a) before entry of a default judgment, or

(b) if a default judgment has been entered, within 21 days after the default judgment was entered.

(3) In addition, the court may set aside a default and a default judgment in accordance with MCR 2.612.

(4) An order setting aside the default or default judgment must be conditioned on the defaulted party paying the taxable costs incurred by the other party in reliance on the default or default judgment, except as prescribed in MCR 2.625(D). The order may also impose other conditions the court deems proper, including a reasonable attorney fee.

(E) Application to Parties Other Than Plaintiff. The provisions of this rule apply whether the party entitled to the default judgment is a plaintiff or a party who pleaded a cross-claim or counterclaim. In all cases a default judgment is subject to the limitations of MCR 2.601(B).

Rule 2.604 Judgment in Actions Involving Multiple Claims or Multiple Parties

(A) Except as provided in subrule (B), an order or other form of decision adjudicating fewer than all the claims, or the rights and liabilities of fewer than all the parties, does not terminate the action as to any of the claims or parties, and the order is subject to revision before entry of final judgment adjudicating all the claims and the rights and liabilities of all the parties. Such an order or other form of decision is not appealable as of right before entry of final judgment. A party may file an application for leave to appeal from such an order.

(B) In receivership and similar actions, the court may direct that an order entered before adjudication of all of the claims and rights and liabilities of all the parties constitutes a final order on an express determination that there is no just reason for delay.

Rule 2.605 Declaratory Judgments

(A) Power to Enter Declaratory Judgment.

(1) In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party

seeking a declaratory judgment, whether or not other relief is or could be sought or granted.

(2) For the purpose of this rule, an action is considered within the jurisdiction of a court if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment.

(B) Procedure. The procedure for obtaining declaratory relief is in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in the constitution, statutes, and court rules of the State of Michigan.

(C) Other Adequate Remedy. The existence of another adequate remedy does not preclude a judgment for declaratory relief in an appropriate case.

(D) Hearing. The court may order a speedy hearing of an action for declaratory relief and may advance it on the calendar.

(E) Effect; Review. Declaratory judgments have the force and effect of, and are reviewable as, final judgments.

(F) Other Relief. Further necessary or proper relief based on a declaratory judgment may be granted, after reasonable notice and hearing, against a party whose rights have been determined by the declaratory judgment.

Rule 2.610 Motion for Judgment Notwithstanding the Verdict

(A) Motion.

(1) Within 21 days after entry of judgment, a party may move to have the verdict and judgment set aside, and to have judgment entered in the moving party's favor. The motion may be joined with a motion for a new trial, or a new trial may be requested in the alternative.

(2) If a verdict was not returned, a party may move for judgment within 21 days after the jury is discharged.

(3) A motion to set aside or otherwise nullify a verdict or a motion for a new trial is deemed to include a motion for judgment notwithstanding the verdict as an alternative.

(B) Ruling.

(1) If a verdict was returned, the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as requested in the motion.

(2) If a verdict was not returned, the court may direct the entry of judgment as requested in the motion or order a new trial.

(3) In ruling on a motion under this rule, the court must give a concise statement of the reasons for the ruling, either in a signed order or opinion filed in the action, or on the record.

(C) Conditional Ruling on Motion for New Trial.

(1) If the motion for judgment notwithstanding the verdict under subrule (A) is granted, the court shall also conditionally rule on any motion for a new trial, determining whether it should be granted if the judgment is vacated or reversed, and shall specify the grounds for granting or denying the motion for a new trial.

(2) A conditional ruling under this subrule has the following effects:

(a) If the motion for a new trial is conditionally granted, that ruling does not affect the finality of the judgment.

(b) If the motion for a new trial is conditionally granted and the judgment is reversed on appeal, the new trial proceeds unless the appellate court orders otherwise.

(c) If the motion for a new trial is conditionally denied, on appeal the appellee may assert error in that denial. If the judgment is reversed on appeal, subsequent proceedings are in accordance with the order of the appellate court.

(D) Motion for New Trial After Ruling. The party whose verdict has been set aside on a motion for judgment notwithstanding the verdict may serve and file a motion for a new trial pursuant to MCR 2.611 within 14 days after entry of judgment. A party who fails to move for a new trial as provided in this subrule has waived the right to move for a new trial.

(E) Appeal After Denial of Motion.

(1) If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling that party to a new trial if the appellate court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict.

(2) If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial should be granted.

Rule 2.611 New Trials; Amendment of Judgments

(A) Grounds.

(1) A new trial may be granted to all or some of the parties, on all or some of the issues, whenever their substantial rights are materially affected, for any of the following reasons:

(a) Irregularity in the proceedings of the court, jury, or prevailing party, or an order of the court or abuse of discretion which denied the moving party a fair trial.

(b) Misconduct of the jury or of the prevailing party.

(c) Excessive or inadequate damages appearing to have been influenced by passion or prejudice.

(d) A verdict clearly or grossly inadequate or excessive.

(e) A verdict or decision against the great weight of the evidence or contrary to law.

(f) Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at trial.

(g) Error of law occurring in the proceedings, or mistake of fact by the court.

(h) A ground listed in MCR 2.612 warranting a new trial.

(2) On a motion for a new trial in an action tried without a jury, the court may

(a) set aside the judgment if one has been entered,

(b) take additional testimony,

(c) amend findings of fact and conclusions of law, or

(d) make new findings and conclusions and direct the entry of a new judgment.

(B) Time for Motion. A motion for a new trial made under this rule or a motion to alter or amend a judgment must be filed and served within 21 days after entry of the judgment.

(C) On Initiative of Court. Within 21 days after entry of a judgment, the court on its own initiative may order a new trial for a reason for which it might have granted a new trial on motion of a party. The order must specify the grounds on which it is based.

(D) Affidavits.

(1) If the facts stated in the motion for a new trial or to amend the judgment do not appear on the record of the action, the motion must be supported by affidavit, which must be filed and served with the motion.

(2) The opposing party has 21 days after service within which to file and serve opposing affidavits. The period may be extended by the parties by written stipulation for 21 additional days, or may be extended or shortened by the court for good cause shown.

(3) The court may permit reply affidavits and may call and examine witnesses.

(E) Remittitur and Additur.

(1) If the court finds that the only error in the trial is the inadequacy or excessiveness of the verdict, it may deny a motion for new trial on condition that within 14 days the nonmoving party consent in writing to the entry of judgment in an amount found by the court to be the lowest (if the verdict was inadequate) or highest (if the verdict was excessive) amount the evidence will support.

(2) If the moving party appeals, the agreement in no way prejudices the nonmoving party's argument on appeal that the original verdict was correct. If the nonmoving party prevails, the original verdict may be reinstated by the appellate court.

(F) Ruling on Motion. In ruling on a motion for a new trial or a motion to amend the judgment, the court shall give a concise statement of the reasons for the ruling, either in an order or opinion filed in the action or on the record.

(G) Notice of Decision. The clerk must notify the parties of the decision on the motion for a new trial, unless the decision is made on the record while the parties are present.

Rule 2.612 Relief From Judgment or Order

(A) Clerical Mistakes.

(1) Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of a party and after notice, if the court orders it.

(2) If a claim of appeal is filed or an appellate court grants leave to appeal, the trial court may correct errors as provided in MCR 7.208(A) and (C).

(B) Defendant Not Personally Notified. A defendant over whom personal jurisdiction was necessary and acquired, but who did not in fact have knowledge of the pendency of the action, may enter an appearance within 1 year after final judgment, and if the defendant shows reason justifying relief from the judgment and innocent third persons will not be prejudiced, the court may relieve the defendant from the judgment, order, or proceedings for which personal jurisdiction was necessary, on payment of costs or on conditions the court deems just.

(C) Grounds for Relief From Judgment.

(1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

(a) Mistake, inadvertence, surprise, or excusable neglect.

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).

(c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

(d) The judgment is void.

(e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.

(f) Any other reason justifying relief from the operation of the judgment.

(2) The motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a), (b), and (c), within one year after the judgment, order, or proceeding was entered or taken. A motion under this subrule does not affect the finality of a judgment or suspend its operation.

(3) This subrule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding; to grant relief to a defendant not actually personally notified as provided in subrule (B); or to set aside a judgment for fraud on the court.

Rule 2.613 Limitations on Corrections of Error

(A) Harmless Error. An error in the admission or the exclusion of evidence, an error in a ruling or order, or an error or defect in anything done or omitted by the court or by the parties is not ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice.

(B) Correction of Error by Other Judges. A judgment or order may be set aside or vacated, and a proceeding under a judgment or order may be stayed, only by the judge who entered the judgment or order, unless that judge is absent or unable to act. If the judge who entered the judgment or order is absent or unable to act, an order vacating or setting aside the judgment or order or staying proceedings under the judgment or order may be entered by a judge otherwise empowered to rule in the matter.

(C) Review of Findings by Trial Court. Findings of fact by the trial court may not be set aside unless clearly erroneous. In the application of this principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.

Rule 2.614 Stay of Proceedings to Enforce Judgment

(A) Automatic Stay; Exceptions: Injunctions, Receiverships, and Family Litigation.

(1) Except as provided in this rule, execution may not issue on a judgment and proceedings may not be taken for its enforcement until the expiration of 21 days after its entry. If a motion for new trial, a motion to alter or amend the judgment, a motion for judgment notwithstanding the verdict, or a motion to amend or for additional findings of the court is filed and served within 21 days after entry of the judgment, execution may not issue on the judgment and proceedings may not be taken for its enforcement until the expiration of 21 days after the entry of the order on the motion, unless otherwise ordered by the court on motion for good cause. Nothing in this rule prohibits the court from enjoining the transfer or disposition of property during the 21-day period.

(2) The following orders may be enforced immediately after entry unless the court orders otherwise on motion for good cause:

(a) A temporary restraining order.

(b) A preliminary injunction.

(c) Injunctive relief included in a final judgment.

(d) An interlocutory order in a receivership action.

(e) In a domestic relations action, an order before judgment concerning the custody, control, and management of property; for temporary alimony; or for support or custody of minor children and expenses.

(3) Subrule (C) governs the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(B) Stay on Motion for Relief From Judgment. In its discretion and on proper conditions for the security of the adverse party, the court may stay the execution of, or proceedings to enforce, a judgment pending the disposition of a motion for relief from a judgment or order under MCR 2.612.

(C) Injunction Pending Appeal. If an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court may suspend, modify, restore, or grant an injunction during the pendency of the appeal on terms as to bond or otherwise that are proper for the security of the adverse party's rights.

(D) Stay on Appeal. Stay on appeal is governed by MCR 7.101(H), 7.209, and 7.302(G). If a party appeals a trial court's denial of the party's claim of governmental immunity, the party's appeal operates as an automatic stay of any and all proceedings in the case until the issue of the party's status is finally decided.

(E) Stay in Favor of Governmental Party. In an action or proceeding in which the state, an authorized state officer, a corporate body in charge of a state institution, or a municipal corporation, is a party, bond may not be required of that party as a prerequisite to taking an appeal or making an order staying proceedings.

(F) Power of Appellate Court Not Limited. This rule does not limit the power of the Court of Appeals or the Supreme Court to

(1) stay proceedings during the pendency of an appeal before them;

(2) suspend, modify, restore, or grant an injunction during the pendency of the appeal; or

(3) enter an order appropriate to preserve the status quo or effectiveness of the judgment to be entered.

(G) Stay of Judgment on Multiple Claims. When a court has ordered a final judgment on some, but not all, of the claims presented in the action under the conditions stated in MCR 2.604(B), the court may

(1) stay enforcement of the judgment until the entry of a later judgment or judgments, and

(2) prescribe conditions necessary to secure the benefit of the judgment to the party in whose favor it was entered.

Rule 2.615 Enforcement of Tribal Judgments

(A) The judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of a tribal court of a federally recognized Indian tribe are recognized, and have the same effect and are subject to the same procedures, defenses, and

proceedings as judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of any court of record in this state, subject to the provisions of this rule.

(B) The recognition described in subrule (A) applies only if the tribe or tribal court

(1) enacts an ordinance, court rule, or other binding measure that obligates the tribal court to enforce the judgments, decrees, orders, warrants, subpoenas, records, and judicial acts of the courts of this state, and

(2) transmits the ordinance, court rule or other measure to the State Court Administrative Office. The State Court Administrative Office shall make available to state courts the material received pursuant to paragraph (B)(1).

(C) A judgment, decree, order, warrant, subpoena, record, or other judicial act of a tribal court of a federally recognized Indian tribe that has taken the actions described in subrule (B) is presumed to be valid. To overcome that presumption, an objecting party must demonstrate that

(1) the tribal court lacked personal or subject-matter jurisdiction, or

(2) the judgment, decree, order, warrant, subpoena, record, or other judicial act of the tribal court

(a) was obtained by fraud, duress, or coercion,

(b) was obtained without fair notice or a fair hearing,

(c) is repugnant to the public policy of the State of Michigan, or

(d) is not final under the laws and procedures of the tribal court.

(D) This rule does not apply to judgments or orders that federal law requires be given full faith and credit.

Rule 2.620 Satisfaction of Judgment

A judgment may be shown satisfied of record in whole or in part by:

(1) filing with the clerk a satisfaction signed and acknowledged by the party or parties in whose favor the judgment was rendered, or their attorneys of record;

(2) payment to the clerk of the judgment, interest, and costs, if it is a money judgment only; or

(3) filing a motion for entry of an order that the judgment has been satisfied.

The court shall hear proofs to determine whether the order should be entered.

The clerk must, in each instance, indicate in the court records that the judgment is satisfied in whole or in part.

Rule 2.621 Proceedings Supplementary to Judgment

(A) Relief Under These Rules. When a party to a civil action obtains a money judgment, that party may, by motion in that action or by a separate civil action:

(1) obtain the relief formerly obtainable by a creditor's bill;

(2) obtain relief supplementary to judgment under MCL 600.6101-600.6143 and

(3) obtain other relief in aid of execution authorized by statute or court rule.

(B) Pleading.

(1) If the motion or complaint seeks to reach an equitable interest of a debtor, it must be verified, and

(a) state the amount due the creditor on the judgment, over and above all just claims of the debtor by way of setoff or otherwise, and

(b) show that the debtor has equitable interests exceeding $100 in value.

(2) The judgment creditor may obtain relief under MCL 600.6110, and discovery under subchapter 2.300 of these rules.

(C) Subpoenas and Orders. A subpoena or order to enjoin the transfer of assets pursuant to MCL 600.6119 must be served under MCR 2.105. The subpoena must specify the amount claimed by the judgment creditor. The court shall endorse its approval of the issuance of the subpoena on the original subpoena, which must be filed in the action. The subrule does not apply to subpoenas for ordinary witnesses.

(D) Order Directing Delivery of Property or Money.

(1) When a court orders the payment of money or delivery of personal property to an officer who has possession of the writ of execution, the order may be entered on notice the court deems just, or without notice.

(2) If a receiver has been appointed, or a receivership has been extended to the supplementary proceeding, the order may direct the payment of money or delivery of property to the receiver.

(E) Receivers. When necessary to protect the rights of a judgment creditor, the court may appoint a receiver in a proceeding under subrule (A)(2), pending the determination of the proceeding.

(F) Violation of Injunction. The court may punish for contempt a person who violates the restraining provision of an order or subpoena or, if the person is not the judgment debtor, may enter judgment against the person in the amount of the unpaid portion of the judgment and costs allowed by law or these rules or in the amount of the value of the property transferred, whichever is less.

(G) New Proceeding. If there has been a prior supplementary proceeding with respect to the same judgment against the party, whether the judgment debtor or another person, further proceedings may be commenced against that party only by leave of court. Leave may be granted on ex parte motion of the judgment creditor, but only on a finding by the court, based on affidavit of the judgment creditor or another person having personal knowledge of the facts, other than the attorney of the judgment creditor. The affidavit must state that

(1) there is reason to believe that the party against whom the proceeding is sought to be commenced has property or income the creditor is entitled to reach, or, if a third party, is indebted to the judgment debtor;

(2) the existence of the property, income, or indebtedness was not known to the judgment creditor during the pendency of a prior supplementary proceeding; and

(3) the additional supplementary proceeding is sought in good faith to discover assets and not to harass the judgment debtor or third party.

(H) Appeal; Procedure; Bonds. A final order entered in a supplementary proceeding may be appealed in the usual manner. The appeal is governed by the provisions of chapter 7 of these rules except as modified by this subrule.

(1) The appellant must give a bond to the effect that he or she will pay all costs and damages that may be awarded against him or her on the appeal. If the appeal is by the judgment creditor, the amount of the bond may not exceed $200, and subrules (H)(2)-(4) do not apply. If the appeal is by a party other than the judgment creditor, subrules (H)(2)-(4) apply.

(2) If the order appealed from is for the payment of money or the delivery of property, the bond of the appellant must be in an amount at least double the amount of the money or property ordered to be paid or delivered. The bond must be on the condition that if the order appealed from is affirmed in whole or in part the appellant will

(a) pay the amount directed to be paid or deliver the property in as good condition as it is at the time of the appeal, and

(b) pay all damages and costs that may be awarded against the appellant.

(3) If the order appealed from directs the assignment or delivery of papers or documents by the appellant, the papers must be delivered to the clerk of the court in which the proceeding is pending or placed in the hands of an officer or receiver, as the judge who entered the order directs, to await the appeal, subject to the order of the appellate courts.

(4) If the order appealed from directs the sale of real estate of the appellant or delivery of possession by the appellant, the appeal bond must also provide that during the possession of the property by the appellant, or any person holding under the appellant, he or she will not commit or suffer any waste of the property, and that if the order is affirmed he or she will pay the value of the use of the property from the time of appeal until the delivery of possession.

Rule 2.622 Receivers in Supplementary Proceedings

(A) Powers and Duties.

(1) A receiver of the property of a debtor appointed pursuant to MCL 600.6104(4) has, unless restricted by special order of the court, general power and authority to sue for and collect all the debts, demands, and rents belonging to the debtor, and to compromise and settle those that are unsafe and of doubtful character.

(2) A receiver may sue in the name of the debtor when it is necessary or proper to do so, and may apply for an order directing the tenants of real estate

belonging to the debtor, or of which the debtor is entitled to the rents, to pay their rents to the receiver.

(3) A receiver may make leases as may be necessary, for terms not exceeding one year.

(4) A receiver may convert the personal property into money, but may not sell real estate of the debtor without a special order of the court.

(5) A receiver is not allowed the costs of a suit brought by the receiver against an insolvent person from whom the receiver is unable to collect the costs, unless the suit is brought by order of the court or by consent of all persons interested in the funds in the receiver's hands.

(6) A receiver may sell doubtful debts and doubtful claims to personal property at public auction, giving at least 7 days' notice of the time and place of the sale.

(7) A receiver must give security to cover the property of the debtor that may come into the receiver's hands, and must hold the property for the benefit of all creditors who have commenced, or will commence, similar proceedings during the continuance of the receivership.

(8) A receiver may not pay the funds in his or her hands to the parties or to another person without an order of the court.

(9) A receiver may only be discharged from the trust on order of the court.

(B) Notice When Other Action or Proceeding Pending; Appointment.

(1) The court shall ascertain, if practicable, by the oath of the judgment debtor or otherwise, whether another action or motion under MCR 2.621 is pending against the judgment debtor.

(2) If another action or motion under MCR 2.621 is pending and a receiver has not been appointed in that proceeding, notice of the application for the appointment of a receiver and of all subsequent proceedings respecting the receivership must be given, as directed by the court, to the judgment creditor prosecuting the other action or motion.

(3) If several actions or motions under MCR 2.621 are filed by different creditors against the same debtor, only one receiver may be appointed, unless the first appointment was obtained by fraud or collusion, or the receiver is an improper person to execute the trust.

(4) If another proceeding is commenced after the appointment of a receiver, the same person may be appointed receiver in the subsequent proceeding, and must give further security as the court directs. The receiver must keep a separate account of the property of the debtor acquired since the commencement of the first proceeding, and of the property acquired under the appointment in the later proceeding.

(C) Claim of Adverse Interest in Property.

(1) If a person brought before the court by the judgment creditor under MCR 2.621 claims an interest in the property adverse to the judgment debtor, and a

receiver has been appointed, the interest may be recovered only in an action by the receiver.

(2) The court may by order forbid a transfer or other disposition of the interest until the receiver has sufficient opportunity to commence the action.

(3) The receiver may bring an action only at the request of the judgment creditor and at the judgment creditor's expense in case of failure. The receiver may require reasonable security against all costs before commencing the action.

(D) Expenses in Certain Cases. When there are no funds in the hands of the receiver at the termination of the receivership, the court, on application of the receiver, may set the receiver's compensation and the fees of the receiver's attorney for the services rendered, and may direct the party who moved for the appointment of the receiver to pay these sums in addition to the necessary expenditures of the receiver. If more than one creditor sought the appointment of a receiver, the court may allocate the costs among them.

Rule 2.625 Taxation of Costs

(A) Right to Costs.

(1) In General. Costs will be allowed to the prevailing party in an action, unless prohibited by statute or by these rules or unless the court directs otherwise, for reasons stated in writing and filed in the action.

(2) Frivolous Claims and Defenses. In an action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591.

(B) Rules for Determining Prevailing Party.

(1) Actions With Several Judgments. If separate judgments are entered under MCR 2.116 or 2.505(A) and the plaintiff prevails in one judgment in an amount and under circumstances which would entitle the plaintiff to costs, he or she is deemed the prevailing party. Costs common to more than one judgment may be allowed only once.

(2) Actions With Several Issues or Counts. In an action involving several issues or counts that state different causes of action or different defenses, the party prevailing on each issue or count may be allowed costs for that issue or count. If there is a single cause of action alleged, the party who prevails on the entire record is deemed the prevailing party.

(3) Actions With Several Defendants. If there are several defendants in one action, and judgment for or dismissal of one or more of them is entered, those defendants are deemed prevailing parties, even though the plaintiff ultimately prevails over the remaining defendants.

(4) Costs on Review in Circuit Court. An appellant in the circuit court who improves his or her position on appeal is deemed the prevailing party.

(C) Costs in Certain Trivial Actions. In an action brought for damages in contract or tort in which the plaintiff recovers less than $100 (unless the recovery is reduced

below $100 by a counterclaim), the plaintiff may recover costs no greater than the amount of damages.

(D) Costs When Default or Default Judgment Set Aside. The following provisions apply to an order setting aside a default or a default judgment:

(1) If personal jurisdiction was acquired over the defendant, the order must be conditioned on the defendant's paying or securing payment to the party seeking affirmative relief the taxable costs incurred in procuring the default or the default judgment and acting in reliance on it;

(2) If jurisdiction was acquired by publication, the order may be conditioned on the defendant's paying or securing payment to the party seeking affirmative relief all or a part of the costs as the court may direct;

(3) If jurisdiction was in fact not acquired, costs may not be imposed.

(E) Costs in Garnishment Proceedings. Costs in garnishment proceedings are allowed as in civil actions. Costs may be awarded to the garnishee defendant as follows:

(1) The court may award the garnishee defendant as costs against the plaintiff reasonable attorney fees and other necessary expenses the garnishee defendant incurred in filing the disclosure, if the issue of the garnishee defendant's liability to the principal defendant is not brought to trial.

(2) The court may award the garnishee defendant, against the plaintiff, the total costs of the garnishee defendant's defense, including all necessary expenses and reasonable attorney fees, if the issue of the garnishee defendant's liability to the principal defendant is tried and

(a) the garnishee defendant is held liable in a sum no greater than that admitted in disclosure, or

(b) the plaintiff fails to recover judgment against the principal defendant.

In either (a) or (b), the garnishee defendant may withhold from the amount due the principal defendant the sum awarded for costs, and is chargeable only for the balance.

(F) Procedure for Taxing Costs.

(1) Costs may be taxed by the court on signing the judgment, or may be taxed by the clerk as provided in this subrule.

(2)When costs are to be taxed by the clerk, the party entitled to costs must present to the clerk, within 28 days after the judgment is signed, or within 28 days after entry of an order denying a motion for new trial, a motion to set aside the judgment, or a motion for other postjudgment relief except a motion under MCR 2.612(C),

(a) a bill of costs conforming to subrule (G),

(b) a copy of the bill of costs for each other party, and

(c) a list of the names and addresses of the attorneys for each party or of parties not represented by attorneys.

In addition, the party presenting the bill of costs shall immediately serve a copy of the bill and any accompanying affidavits on the other parties. Failure to present a bill of costs within the time prescribed constitutes a waiver of the right to costs.

(3) Within 14 days after service of the bill of costs, another party may file objections to it, accompanied by affidavits if appropriate. After the time for filing objections, the clerk must promptly examine the bill and any objections or affidavits submitted and allow only those items that appear to be correct, striking all charges for services that in the clerk's judgment were not necessary. The clerk shall notify the parties in the manner provided in MCR 2.107.

(4) The action of the clerk is reviewable by the court on motion of any affected party filed within 7 days from the date that notice of the taxing of costs was sent, but on review only those affidavits or objections that were presented to the clerk may be considered by the court.

(G) Bill of Costs; Supporting Affidavits.

(1) Each item claimed in the bill of costs, except fees of officers for services rendered, must be specified particularly.

(2) The bill of costs must be verified and must contain a statement that

(a) each item of cost or disbursement claimed is correct and has been necessarily incurred in the action, and

(b) the services for which fees have been charged were actually performed.

(3) If witness fees are claimed, an affidavit in support of the bill of costs must state the distance traveled and the days actually attended. If fees are claimed for a party as a witness, the affidavit must state that the party actually testified as a witness on the days listed.

(H) Taxation of Fees on Settlement. Unless otherwise specified a settlement is deemed to include the payment of any costs that might have been taxable.

(I) Special Costs or Damages.

(1) In an action in which the plaintiff's claim is reduced by a counterclaim, or another fact appears that would entitle either party to costs, to multiple costs, or to special damages for delay or otherwise, the court shall, on the application of either party, have that fact entered in the records of the court. A taxing officer may receive no evidence of the matter other than a certified copy of the court records or the certificate of the judge who entered the judgment.

(2) Whenever multiple costs are awarded to a party, they belong to the party. Officers, witnesses, jurors, or other persons claiming fees for services rendered in the action are entitled only to the amount prescribed by law.

(3) A judgment for multiple damages under a statute entitles the prevailing party to single costs only, except as otherwise specially provided by statute or by these rules.

Rule 2.626 Attorney Fees

An award of attorney fees may include an award for the time and labor of any legal assistant who contributed nonclerical, legal support under the supervision of an attorney, provided the legal assistant meets the criteria set forth in Article 1, § 6 of the Bylaws of the State Bar of Michigan.

Rule 2.630 Disability of Judge

If, after a verdict is returned or findings of fact and conclusions of law are filed, the judge before whom an action has been tried is unable to perform the duties prescribed by these rules because of death, illness, or other disability, another judge regularly sitting in or assigned to the court in which the action was tried may perform those duties. However, if the substitute judge is not satisfied that he or she can do so, the substitute judge may grant a new trial.